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Report of the Human Rights Council Advisory Committee on the activities of vulture funds and the impact on human rights

Note by the Secretariat

The Secretariat has the honour to transmit the report of the Human Rights Council Advisory Committee on the activities of vulture funds and the impact on human rights, prepared pursuant to Council resolution 27/30.

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Report of the Human Rights Council Advisory Committee on the activities of vulture funds and the impact on human rights

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 27/30, by which the Council requested the Human Rights Council Advisory Committee to prepare a research-based report on the activities of vulture funds and their impact on human rights.

2. In the resolution, the Council reaffirmed that the activities of vulture funds highlighted some of the problems in the global financial system and were indicative of the unjust nature of the current system, which directly affected the enjoyment of human rights in debtor States. The Council called upon States to consider implementing legal frameworks to curtail predatory funds activities within their jurisdictions.

3. In preparing the report, the Advisory Committee sought the views and inputs of Member States, United Nations agencies, relevant international and regional organizations, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and relevant special procedures mandate holders, including the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, as well as national human rights institutions, non-governmental organizations and eminent academics. The report was prepared by the Rapporteur of the drafting group on the activities of vulture funds and the impact on human rights, Jean Ziegler.

4. The Advisory Committee would like to thank in particular the Governments of Argentina, Cuba, El Salvador, Kuwait, Mauritius, the Philippines and the Bolivarian Republic of Venezuela, the Ombudsman of Portugal, the National Commission for Human Rights of Greece, the Centre for Legal and Social Studies (CELS), Centre Europe–tiers monde (CETIM) and the Asamblea Permanente por los Derechos Humanos (APDH) for the information provided in response to the questionnaire sent in March 2015.

5. In the report the Rapporteur highlights the growing concerns raised by the strategies employed by vulture funds. He analyses some of the most striking examples and considers national and international initiatives undertaken to mitigate the negative impact of these activities on the enjoyment of economic, social and cultural rights and the right to development.

II. What are vulture funds?

6. There is no international legal regime governing cases of State "insolvency" or "bankruptcy". When a State defaults on its sovereign debt, a process for restructuring the debt must be initiated at its own initiative in order to get a reduction of the debt or an extension of the repayment terms. This implies undertaking complex and protracted negotiations with a very diverse range of creditors.[1] Participation in restructuring processes is voluntary and, therefore, even a small percentage of creditors may well decide to hold out with a view to obtaining a higher level of repayment in the future. It is at this point that vulture funds come into play.

[1] These might be international financial institutions, bilateral or multilateral lenders, private financial institutions or bondholders.

7. According to Cephas Lumina, the former Independent Expert on the effects of foreign debt on human rights, vulture funds are:

> private commercial entities that acquire, either by purchase, assignment or some other form of transaction, defaulted or distressed debts, and sometimes actual court judgments, with the aim of achieving a high return. In the sovereign debt context, vulture funds (or "distressed debt funds", as they often describe themselves) usually acquire the defaulted sovereign debt of poor countries (many of which are heavily indebted poor countries (HIPCs)), on the secondary market at a price far less than its face value and then attempt, through litigation, seizure of assets or political pressure, to seek repayment of the full face value of the debt together with interest, penalties and legal fees (see A/HRC/14/21, para. 8).

8. These commercial entities are not lenders, but private hedge funds that purchase on the secondary market (or collect from other bondholders) distressed debt at discounted prices and then sue the debtor for a much higher amount. They are popularly called "vultures" because of their modus operandi, whereby they:

(a) *Target sovereign States with distressed economies and frequently with weak capacity for legal defence*. According to the African Development Bank, 20 of the 36 poorest developing countries have been threatened or targeted by aggressive litigation by vulture funds since 1999.[2] The World Bank estimates that more than one third of the countries that qualified for its debt relief initiative have been targeted by lawsuits by at least 38 litigating creditors, with judgments totalling $1 billion in 26 of the cases;[3]

(b) *Operate and take advantage of the lack of regulation of the secondary market*. To obtain significant discounts, vulture funds acquire sovereign bonds when the indebted country is either close to default or has already defaulted on its debt. In the secondary market, investors can operate with great secrecy in terms of both ownership and operations. Sovereign bonds are thus traded between investors without the concerned debtor State necessarily being aware or informed of such operations;[4]

(c) *Refuse systematically to participate in orderly and voluntary debt restructuring processes*. Once a State starts negotiations with private bondholders aimed at restructuring the sovereign debt, vulture funds exercise their "right" to hold out or collect and purchase sovereign distressed bonds, then wait until the country's financial situation has improved to start negotiations for a better deal. Their position is strengthened by difficulties that the debtor State may encounter in reaccessing the international capital markets.[5] Under such circumstances, the threat of being subjected to a long and costly process with a particularly "aggressive" litigator imposes additional pressure on the State that may prompt it to accept a less favourable settlement;

(d) *Sue the country for reimbursement of the full value of the bond, plus interest and delay penalties*. In cases where an agreement with the State is not reached, vulture funds can file a legal claim to seek reimbursement. To ensure that they get a favourable

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[2] African Development Bank Group, "Vulture funds in the sovereign debt context".

[3] Ibid.

[4] As has been pointed out, big institutional investors do not like to sue sovereign States and therefore can obtain some return by selling their defaulted debt to vulture funds on the secondary market. D. Sookun, *Stop Vulture Fund Lawsuit: A Handbook* (Commonwealth Secretariat, 2010), p. 11.

[5] Vulture funds may resort not only to court proceedings but also to lobbying and other pressure tactics, which can range from attempting to attach the debtor State's assets to organizing discrediting press campaigns with a view to forcing the Government to pay. R. Kupelian and M.S. Rivas, "Vulture funds: the lawsuit against Argentina and the challenge they pose to the world economy", Centro de Economía y Finanzas para el Desarrollo de la Argentina, Working Paper No. 49, February 2014, p. 7.

court decision, they make sure that "creditor-friendly" jurisdictions are involved in the resolution of the dispute.[6] The courts of debtor countries are increasingly becoming an available option as weaker legal systems are easily overwhelmed by the level of technical detail involved in this kind of litigation.[7] Cases brought by vulture funds are particularly protracted: the average estimated time for recovery is six years, which would suggest annualized returns averaging from 50 to 333 per cent.[8] Such long judicial proceedings are always burdensome and can complicate debtor States' financial and reserve management;

(e) *"Chase" the country to enforce the judgment*. Once vulture funds have obtained a favourable judgment, they seek its enforcement before different courts (i.e., through "forum shopping" practices) until they secure the enforcement action they desire. Figures show that attachment of the country's assets abroad has become a particularly common enforcement strategy in past years.[9] Despite many unsuccessful attempts, such actions have often helped vulture funds to achieve a favourable out-of-court settlement. However, vulture funds continue to deploy a legal strategy before courts that seek to enforce favourable rulings by challenging the doctrine of sovereign immunity, which has traditionally protected certain State properties and assets from seizure;[10]

(f) *Obtain exorbitant profits*. Vulture funds have achieved, on average, recovery rates of some 3 to 20 times their investment, equivalent to returns of 300 to 2,000 per cent. The International Monetary Fund (IMF) estimates that in some cases the claims by vulture funds constitute as much as 12 to 13 per cent of a country's gross domestic product (GDP);[11]

(g) *Operate in jurisdictions where bank secrecy rules apply*.[12] Most vulture funds are incorporated in tax havens, where there is no obligation to disclose information on benefits or ownership and it is feasible to hide gains to avoid or evade taxation.[13] Such jurisdictions facilitate the secretive manner in which vulture funds operate as well as the flight of much-needed capital, particularly from developing countries (see A/HRC/14/21, paras. 13-14).

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[6] London and New York are the primary locations for external sovereign borrowing and related legal disputes. Studies provide evidence that over 70 per cent of international bonds were issued under New York State law, while most of the reminder were issued under English law. J. Schumacher, C. Trebesch and H. Enderlein, "Sovereign defaults in court: the rise of creditor litigation", 6 May 2014, p. 1.

[7] "Vulture funds and poor country debt: recent developments and policy responses", Jubilee USA Network Briefing Note No. 4, April 2008, p. 3.

[8] African Development Bank Group, "Vulture funds in the sovereign debt context".

[9] Li Yuefen, Special Adviser, South Centre, presentation to the Advisory Committee on 25 February 2015. A ruling of the High Court of the United Kingdom of Great Britain and Northern Ireland in 2005, for example, allowed the firm Kensington International Ltd. to intercept the proceeds of oil sales of the Congo to recoup a $39 million debt. The profits realized by the Congo from the sale of oil can be seized until a claim of $90 million is repaid.

[10] Schumacher, "Sovereign defaults in court", pp. 7-8 and 12.

[11] African Development Bank Group, "Vulture funds in the sovereign debt context".

[12] For example, Donegal International Ltd. is based in the British Virgin Islands, Kensington International Ltd. in the Cayman Islands and FG Hemisphere in Delaware, United States of America.

[13] Some of the features of these jurisdictions are: opacity (bank secrecy or other mechanism such as trusts); low taxation or exemption from taxation for non-residents; regulations favourable to the establishment of front companies without real activity on the territory; lack of cooperation with other countries' inland revenue, customs and/or judicial authorities; and weak or non-existent financial regulation. See R. Vivien, "FG Hemisphere vulture fund's latest victory against the Democratic Republic of Congo: What is Belgium doing?", Committee for the Abolition of Illegitimate Debt, 2 January 2011. Available from www.cadtm.org.

III. Case studies

9. Vulture funds have a long history of predatory practices against developing countries, particularly heavily indebted poor countries (HIPCs). The most commonly targeted are countries, most of them in Africa and Latin America, with already unsustainable debt burdens and lacking the capacity and resources needed to face complex and protracted judicial processes. In recent years, vulture funds have aimed their profit expectations at middle-income countries, particularly Argentina. With more than 40 lawsuits filed by commercial investors after the default of 2001, the country accounts for a third of the total number of lawsuits brought by vulture funds.[14] The Rapporteur examines in detail in this section some examples of the impact of vulture fund strategies and activities on human rights.

A. *Donegal International v. Zambia*

10. By 1984, the Government of Zambia was unable to service a $30 million debt owed to Romania for the acquisition of agricultural equipment. In early 1997, the firm Debt Advisory International (which later incorporated Donegal International) began to put forward proposals for acquiring the debt. In 1999, just as Zambia was about to reach the decision point for comprehensive debt relief under the HIPC Initiative, Romania sold the debt to Donegal International for about $3 million, 11 per cent of the face value.

11. In 2003, in controversial circumstances involving allegations of corruption and bribing of public officials, Zambia signed a settlement agreement with Donegal International to waive sovereign immunity from litigation and paid approximately $15 million of the then $44 million face value of the debt. The agreement also included penal rates of interest in the event of default and the application of United Kingdom law to any future dispute arising from it. After paying off a total of $3.4 million, the Government of Zambia stopped fulfilling the terms of the agreement, arguing that it was tainted with corruption (see A/HRC/14/21, para. 24).

12. In 2006, only months before Zambia was due to receive debt cancellation under the HIPC Initiative, the company sued the country in the United Kingdom courts for a total amount of $55 million. Donegal obtained a favourable ruling, obtaining a 370 per cent return, nearly 17 times the value of the original debt.

13. The Government of Zambia reportedly recognized the judgment and allocated about 65 per cent of the amount received, already earmarked for health programmes, to service the debt (ibid., para. 25).[15] As a result of this litigation, vulture funds took away from the country almost 15 per cent of its total social welfare expenditure, funds that could have been channelled instead towards education, health care and poverty alleviation.[16]

[14] Schumacher, "Sovereign defaults in court", p. 36.

[15] See also Kupelian, "Vulture funds", p. 9 and T. Laryea, "Donegal v. Zambia and the persistent debt problems of low-income countries", *Law and Contemporary Problems*, vol. 73, No. 4 (Fall 2010).

[16] Li Yuefen, presentation to the Advisory Committee; L. Polgreen, "Unlikely ally against Congo Republic graft", *New York Times*, 10 December 2007.

B. *FG Hemisphere v. Democratic Republic of the Congo*

14. In 1980, the Democratic Republic of the Congo entered into a credit agreement with Energoinvest, a company based in Sarajevo, for the construction of a high-voltage electric power transmission facility. The country soon defaulted on its repayment obligations.

15. In 2003, the International Chamber of Commerce made two arbitral awards in favour of the company and in 2004 a District Court in the United States of America confirmed the amounts to be paid: $18,430,000 and $11,725,000, plus 9 per cent interest and the costs of arbitration. At that point, the company decided to transfer the right to recover the claim to FG Hemisphere, a company based in the State of Delaware, a tax haven in the United States.[17] The debt was reportedly purchased for $37 million.[18]

16. FG Hemisphere then pursued its claim on the debt by attempting to seize the country's assets in different parts of the world. In 2005, a court ordered the Government to provide detailed information about the location of those assets worth more than $10,000.[19] Following the failure to provide that information, a District Court in the United States imposed a fine of $5,000 per week, to increase periodically to a maximum of $80,000 per week, for failing to comply with the order (ibid., para. 19).

17. To enforce the 2003 rulings, FG Capital Management has managed to freeze hundreds of millions of dollars owed to the Democratic Republic of the Congo and obtained enforcement judgments from several courts all around the world. In November 2008, a South African court effectively halted sales of electricity from the country by ruling that FG Hemisphere could seize any payments for services sold by the Democratic Republic to South Africa. In February 2010, the Court of Appeal in Hong Kong froze about $100 million of a signing bonus for a $6 billion minerals-for-infrastructure agreement between the Democratic Republic and China until the International Chamber of Commerce awards were resolved.[20] The agreement included the payment of $221 million in mining entry fees to the Government, which FG Hemisphere sought to receive towards payment of the arbitral award. The Government of the Democratic Republic claimed State immunity, but the Court of Appeal ruled that the Democratic Republic had no immunity in commercial proceedings.[21]

18. This is an unfortunate event for a country that needs money for development. The Democratic Republic of the Congo is rich in natural resources, but is recovering from more than four decades of dictatorship and war that have destroyed its infrastructure. In fact, it is difficult to see how a country with one of the lowest Human Development Index rankings (176) can service its external debt obligations without at the same time harming its poverty reduction and economic development prospects (ibid., para. 20). The negative impact of vulture funds on the State's capacity to create the conditions necessary to fulfil its human rights obligations is therefore evident.

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[17] The sale was approved by the former Prime Minister of Bosnia and Herzegovina, who was investigated on corruption charges relating to his tenure at Energoinvest. "Vulture funds–the key players", *Guardian*, 15 March 2011.

[18] M. Kavanagh, "Congo, U.S.-controlled venture lose $100 million vulture claim", 3 November 2010. Available from Bloomberg.com.

[19] Sookum, *Stop Vulture Fund Lawsuit*, p. 45.

[20] Kavanagh, "Congo, U.S.-controlled venture lose $100 million vulture claim".

[21] K. Crossley, "Case analysis: *Democratic Republic of the Congo and Ors v. Hemisphere Associates LLC*", *Asian Legal Business*, 17 June 2011.

C. *NML Capital Limited v. Argentina*

19. It has been well documented how the deteriorating economic, financial and social situation led Argentina to a catastrophic collapse in 2001 (A/HRC/25/50/Add.3). Soon after defaulting, the Government recognized the need to restructure roughly $81 billion of debt. In two successive exchanges of offers, in 2005 and 2010, Argentina succeeded in reaching an agreement with more than 92 per cent of its creditors, which agreed to take an approximately 70 per cent "haircut" on their bond holdings.

20. A group representing 1.6 per cent of bondholders, led by NML Capital Ltd. (a hedge fund based in the Cayman Islands),[22] refused to restructure and decided to sue the country in the New York State courts for the full amount. Some of the defaulted bonds had been bought on the secondary market just before the country's default in 2001, but most were purchased after, at bargain prices. The vulture funds allegedly paid about $48.7 million for more than $220 million in defaulted bonds soon after the default; others were purchased even after the bond exchanges of 2005 and 2010 (ibid., para. 32).

21. In November 2012, a New York District Court judge ordered Argentina to pay NML Capital and other "holdouts" in full (about $1.3 billion), an amount that may represent a profit of about 1,600 per cent.[23] The court ruling was first confirmed by a decision of the United States Court of Appeals for the Second Circuit and subsequently endorsed by the Supreme Court, which stated that the country could not pay the creditors that had accepted the exchange offers until the "holdout" creditors had been paid in full.

22. These rulings represent a major departure from the traditional market/legal understanding of the pari passu clause, a common component of bond contracts.[24] NML contended that the country was not granting the same treatment to the creditors that did not participate in the exchange because it had agreed only to pay its debt to the exchange bondholders.[25]

23. In February 2016, with a newly elected Government in office in Argentina, the United States court set a number of conditions to effectively lift the injunction and allow Argentina to service the restructured debts.[26] Events accelerated from then on and in April, ceding to massive financial pressure, Argentina abruptly reversed its previous policy

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[22] Elliott Management investment fund controls NML Capital and has brought actions against Argentina and many other countries. The chief executive officer, Paul Singer, is one of the main financial backers of the Republican Party in the United States, which gives him enormous lobbying power as well as substantial political and legal support for carrying out these operations. See Kupelian, "Vulture funds", p. 10.

[23] Letter dated 9 July from Axel Kicillof, Minister of Economy and Public Finance of Argentina, to the *Financial Times*.

[24] By equal step or without preference. The international financial markets have long understood that this clause protects a lender against the risk of legal subordination in favour of another creditor. See L.C. Buchheit and J.S. Pam, "The pari passu clause in sovereign debt instruments", *Emory Law Journal*, vol. 53 (Special Edition, 2004), pp. 869-870.

[25] See J. Muse-Fisher, "Starving the vultures: *NML Capital v. Republic of Argentina* and solutions to the problem of distressed-debt funds", *California Law Review*, vol. 102, No. 6 (2014), p. 1689. Instead of providing for contractual protection against the risk of legal subordination in favour of another creditor holder of unsubordinated and unprotected debt, the pari passu clause is interpreted more broadly as providing factual preference to "holdout" creditors over the rest of creditors.

[26] "Argentina wins a victory against its hedge-fund creditors", *Economist*, 21 February 2016.

regarding these claims and agreed in an out-of-court settlement to pay $6.5 billion dollars to the "holdouts".[27]

24. The settlement represents a further setback in the process aimed at setting up an international sovereign debt restructuring mechanism based on the equal treatment of creditors, and human rights experts have expressed profound regret. Paying vulture funds much more than what was paid to cooperative creditors in previous debt restructuring is a disturbing outcome. Rewarding those who refuse to participate in debt restructuring efforts sends the wrong message.[28]

25. Doubts arise as to whether this settlement will be advantageous from a human rights perspective. Indeed, putting an end to more than a decade of judicial disputes may, in the short term, reinforce the country's credibility and allow it to borrow on the international financial markets. But in order to pay the "holdouts", the Government has been forced to increase its debt burden, a fact that, in the long run, may hinder the State in complying with its obligations in the area of economic and social rights, thereby also exacerbating inequality and financial instability.

26. In any event, this long judicial dispute highlights the pressing need to regulate speculative investment practices in order to bring them into line with human rights approaches and requirements. Furthermore, it has prompted a process aimed at establishing a multilateral mechanism with a mandate to resolve sovereign debt litigation in an independent and impartial manner.

27. Although the legal consequences of this case should not be underestimated, its final outcome must be read in the light of the particular circumstances that surrounded the dispute and the evident political implications involved therein. There is no doubt, however, that the doctrine endorsed by the United States courts provides vulture funds with increased credibility that will certainly incentivize them to pursue these strategies further in the future.[29]

IV. Disruptive litigation: a growing trend

28. The case of Argentina is not an exception, but forms part of a more general trend. Increasingly, non-cooperative creditors are reaping extraordinary profits owing to settlements reached or judgments obtained after disruptive litigation. Not only do investors' expectations of obtaining high returns by suing countries asphyxiated by onerous financial terms benefit from the lack of a global mechanism on debt restructuring, but they may also be at the origin of this state of affairs.

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[27] Raising the funds required the biggest bond sale by a developing country, worth $16.5 billion dollars with an interest rate between 6.5 and 8 per cent. "Sovereign debt: curing defaults", *Financial Times*, 7 June 2016. See also *Official Records of the General Assembly*, 107th plenary meeting, 9 September 2014 (A/68/PV.107), p. 6.

[28] OHCHR, information note, "Hold-out deal in Argentina makes solving debt crises more difficult, United Nations rights experts say", 8 March 2016.

[29] Debt and Development Coalition Ireland, "Stop debt vultures: implications of the vulture attack on Argentina", 1 September 2014.

29. In fact, statistics show that lawsuits and attempted attachments are increasingly becoming a common way of solving sovereign debt disputes, entailing costly and protracted judicial processes for the State that has defaulted.[30] The trend has grown since the 1990s, from 10 to almost 50 per cent of such disputes. In the period 1976-2010 there were about 120 lawsuits against 26 defaulting countries in the United States and the United Kingdom alone.[31] The high rate of success (72 per cent) certainly encourages this worrying tendency.[32]

30. Accounting for 79 and 27 creditor lawsuits respectively, Latin American and African countries are among the most affected. Over the past few years, litigation against HIPCs has reached a plateau. Although most lawsuits are now filed against middle-income countries, nearly 30 per cent of all lawsuits have been launched against HIPCs.[33] In March 2016, at least 13 cases were still outstanding against eight such countries.[34]

31. With an average of eight cases being filed per year, Africa has been by far the most harassed region. According to IMF reports, claims by vulture funds constitute between 12 and 13 per cent of African countries' GDP. African countries have the lowest rate of winning cases and have disbursed more than 70 per cent of the nearly $1 billion dollars awarded to vulture funds as a result of lawsuits.[35]

32. In 2008 the African Development Bank established the African Legal Support Facility with the aim of providing legal assistance and advice on how to tackle the activities of vulture funds and disincentivize creditors from pursuing debt litigation against African countries.[36] As of January 2016, the agreement establishing this international organization had been signed by a total of 52 African and other States, including Belgium, Brazil, France, the Netherlands and the United Kingdom, and 7 international organizations.[37]

33. Also with a view to minimizing future creditor lawsuits, a "HIPC Legal Clinic" was established in 2006 by the Commonwealth Secretariat to assist sovereign debtor States to face creditor litigation and in the negotiation and renegotiation of foreign debt.[38]

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[30] Schumacher, "Sovereign defaults in court", p. 2. The study concludes that "creditors can retaliate against defaults via legal means" and by "throwing sand in the wheels" of the economy of defaulting countries.

[31] Ibid., pp. 1 and 4. This number does not include litigation resulting from bilateral investment treaties or before international arbitration bodies, which are increasingly being used by vulture funds to deploy their strategies.

[32] IMF, Factsheet: Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative, 8 April 2016.

[33] Currently, 39 States are classified as HIPCs, i.e., countries with high poverty levels that are eligible for financial assistance from IMF and the World Bank.

[34] IMF, *"Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) – Statistical Update"*, March 2016, p. 46.

[35] Ibid.; see also African Legal Support Facility, Medium Term Strategy 2013-2017, adopted on 29 May 2012, p. 10. Available from alsf.afdb.org/sites/default/files/resources/ALSF_MTS%20%281%29%20copy.pdf.

[36] The Management Board approved supporting the first case involving vulture fund litigation against the Democratic Republic of the Congo in 2010. African Legal Support Facility, Medium Term Strategy 2013-2017, p. 10.

[37] See alsf.afdb.org/basic/members.

[38] Ministerial statement adopted at the Commonwealth HIPC Ministerial Forum of the Commonwealth Secretariat, held in Washington, D.C., on 12 April 2007.

V. National legislation

34. At present, only two countries, Belgium and the United Kingdom, have enacted some sort of legal framework to discourage disruptive litigation initiated by vulture funds. In 2013, United Kingdom legislation was replicated in the Overseas Territories and the dependencies of Jersey, Guernsey and the Isle of Man.[39] Attempts to enact similar initiatives in France and the United States have so far failed.[40]

35. While these national laws have played an important deterrent role, it is evident that more national laws are needed to tackle this problem effectively. The enactment of national legislation is particularly needed in those jurisdictions preferred by vulture funds for starting litigation or enforcing attachments. In that regard, useful guidelines for States can be derived from existing domestic laws and experience on their implementation, including the following: (a) protection should be extended to any debt-distressed country and not only to HIPCs; (b) where possible, procedures should allow for the identification of debts that are protected from the claims of vulture funds, on the basis of objective criteria; (c) concerns about the socioeconomic situation of the debtor State and the well-being of its population should be adequately incorporated and addressed by the legislator; and (d) issues regarding the lack of transparency in the secondary debt market and the operation of vulture funds in tax havens should be also tackled.

Belgium

36. Belgium was the first country to pass a law in 2008, to safeguard "funds disbursed towards development cooperation and debt relief" from vulture funds' actions.[41] The legislation was adopted in reaction to the numerous lawsuits lodged before national courts by vulture funds seeking to seize the funds allocated to developing poor countries under official development assistance programmes.[42] The law automatically bars such attempts.

37. A law passed in 2015 set out a more detailed framework by fixing limits to the amount that legitimately can be claimed by the vulture funds.[43] In cases where it is demonstrated that the creditor pursues an "illegitimate advantage" through the repurchase of a loan or a claim owed by a State, the law provides that "its rights with respect to the debtor State will be limited to the price it paid to repurchase such a loan or debt".

38. Further, the law sets two cumulative conditions that must be fulfilled in order to conclude that an "illegitimate advantage" is being pursued. First, there must be a "manifest disproportion" between the repurchase price of the loan or debt and the face value or the amounts that the creditor seeks to recover from the State; second, at least one of the following criteria must be met:

(a) The debtor State was insolvent (or a default was imminent) at the time of the debt buy-back;

(b) The creditor is based in a tax haven or similar jurisdiction;

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[39] See, for example, Debt Relief (Developing Countries) (Jersey) Law 2013.

[40] See *Proposition de loi n° 3214, visant à lutter contre l'action des fonds financiers dits « fonds vautours »*, 28 June 2006; and H.R.2932, Stop Very Unscrupulous Loan Transfers from Underprivileged Countries to Rich, Exploitive Funds Act, 1 August 2008.

[41] *Loi visant à empêcher la saisie ou la cession des fonds publics destinés à la coopération internationale, notamment par la technique des fonds vautours*, 6 April 2008.

[42] Ten lawsuits were lodged against the Democratic Republic of the Congo in 2007 alone. Sookum, *Stop Vulture Funds Lawsuits*, pp. 90-91.

[43] *Loi relative à la lutte contre les activités des fonds vautours*, 12 July 2015.

(c) The creditor systematically uses legal proceedings to obtain repayment;

(d) The creditor refused to take part in debt restructuring efforts;

(e) The creditor abused the weakness of the State to negotiate a repayment which is manifestly unbalanced;

(f) The total reimbursement of the amounts demanded by the creditor would have a measurably adverse impact on the public finances of the State and would likely compromise the socioeconomic development of its population.

39. The law is not limited to HIPCs and provides comprehensive protection against litigation by vulture funds. It integrates human rights concerns while taking due account of the important public interests at stake when dealing with sovereign debt.[44] Requiring the judges to make an assessment of the impact that the repayment of the debt might have on the socioeconomic situation of the debtor State and on the well-being of its population is certainly an innovative element and one of the most prominent aspects of this legislation.

40. NML Capital is now seeking the annulment of this legislation through a recourse recently filed before the Constitutional Court of Belgium.[45] Three Belgian civil society organizations have intervened in the process to support this legislation in defence of the public interest.[46] It is contended that the several legal arguments put forward by the vulture funds seek an endorsement of the pre-eminence of the right to property of the bondholders, ignoring the broader human rights implications of the Belgian law.[47]

United Kingdom of Great Britain and Northern Ireland

41. In the United Kingdom, Parliament first discussed a draft bill aimed at limiting the "maximum recoverable amount" of the defaulted sovereign debt of developing countries in 2009.[48] The proposal established a threshold for the maximum recoverable amount ("equal to any amounts recovered from other actions related to the same defaulted sovereign debt"), the interest rate and the manner in which it is calculated.[49] It further required that, before seeking a judgment or the enforcement of a judgment, vulture funds must file a "consent application" to provide national authorities with all the relevant information related to the acquisition or collection of the defaulted sovereign debt.[50]

42. The initial draft did not pass, but in September 2010, another bill pursuing similar aims was adopted. The Debt Relief (Developing Countries) Act 2010 specifically limits the amount recoverable of claims related to "qualifying debts". The legislation applies to any

[44] Chambre des Représentants de Belgique, *Proposition de loi concernant la lutte contre les activités des fonds vautours*, Doc 54 0394/001, 7 October 2014.

[45] R. Vivien, « Après l'Argentine, les fonds vautours s'en prennent à la Belgique », *Le Soir*, 12 April 2016.

[46] "Three NGOs in court against a vulture fund", press conference, Press Club Brussels, 15 June 2016; see also OHCHR, "Belgian legislation against vulture funds should be preserved – United Nations rights expert urges", 15 June 2016.

[47] See *Requête en intervention du Comité pour l'abolition de la dette du Tiers Monde (CADTM), le Centre national de coopération au développement (CNCD-11.11.11), et Koepel van de Vlaams Noord Zuidbeweging 11.11.11, concernant la requête en annulation déposée par NML Capital Ltd contre la loi du 12 juillet 2015 relative à la lutte contre les activités des fonds vautours*.

[48] Developing Country Debt (Restriction of Recovery) Bill 2008-2009.

[49] Ibid., section 3.

[50] Ibid., section 6.

judgment by a court in the United Kingdom and foreign judgments enforceable in the United Kingdom, as well as to arbitral awards.[51] However, its scope is limited to HIPCs.

43. The aim of the law is to ensure that courts in the United Kingdom neither render nor enforce a judgment that allows recovery of covered debts of those countries in excess of the amount calculated as sustainable debt under the HIPC Initiative. The creditor may not recover more than the existing debt, even if the debt is renegotiated or the subject of a new agreement. While there is no provision for cancellation of debt, enforcement is limited to the recoverable amount under the existing debt, irrespective of the law applicable to the debt or claim.[52]

Other draft legislation

44. An amendment introduced to a draft bill related to transparency, corruption and the modernization of the economic sphere was recently discussed in France. The proposed new amendment aims at protecting States facing a sovereign default and that are beneficiaries of official development assistance. Of note is that vulture funds are required to obtain an authorization from the court before proceeding to seizure for debt recovery.[53] The draft supplements another proposal aimed at guaranteeing immunity from seizure to certain State properties.[54]

VI. Forging international consensus

45. A growing consensus has emerged in recent years on the need to curb the activities of vulture funds. A number of States have expressed support for international action to protect HIPCs in particular from the activities of vulture funds as well as broad support for the establishment of an international mechanism for orderly debt restructuring.

46. In a meeting of the Group of Eight held in May 2007, finance ministers and governors of central banks expressed their concern about the problem of aggressive litigation against HIPCs. While welcoming the steps already taken by the Paris Club to address this problem, they urged all sovereign creditors not to sell claims on those countries.[55]

47. The same year, Commonwealth finance ministers affirmed that they were particularly alarmed at the lawsuits filed against HIPCs by some commercial creditors, especially vulture funds, and emphasized the need for concerted international action to address this problem. They urged Governments to introduce legal protection to ensure that, as a minimum, debt relief was provided on terms equivalent to the HIPC framework.[56]

[51] Ibid., section 5.

[52] M. Waibel, "Debt relief to poor countries: rules v. discretion", *Butterworths Journal of International Banking and Financial Law* (June 2010), available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1612242.

[53] At the time of writing, the law was being discussed by the Senate. See A. Paredes-Vanheule, "France to restrict 'vulture funds' claims", Investment Europe, 3 June 2016.

[54] *Projet de loi relatif à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*, arts. 24 and 24 bis.

[55] "Statement of G7 Finance Ministers and Central Bank Governors", Washington, D.C., 19 October 2007.

[56] Ministerial statement adopted at the Commonwealth HIPC Ministerial Forum.

48. In 2008, the European Union member States committed themselves not to sell claims on HIPCs to creditors unwilling to provide debt relief.[57] A year earlier, members of the Paris Club endorsed the same position.[58]

49. Similar concerns were also expressed by the States signatories to the Doha Declaration on Financing for Development: outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, adopted in 2008, in which they welcomed steps taken to prevent aggressive litigation against HIPC- eligible countries, including through the enhancement of debt buy-back mechanisms and the provision of technical assistance and legal support, and called on creditors not to sell claims on HIPCs to those that refuse to participate adequately in debt relief efforts.[59]

50. In 2009, the Parliamentary Assembly of the Council of Europe adopted a recommendation in which it strongly condemned the activities of vulture funds, which "have no compunction in taking advantage of opportunities arising from debt waivers granted by creditor countries, particularly European, or blocking worldwide the assets of the countries concerned and threatening them with bankruptcy".[60]

51. In 2014 and 2015, the Ministers for Foreign Affairs of the member States of the Group of 77 (G-77) and China recognized that the activities of vulture funds and their actions of a highly speculative nature posed a risk to all future debt restructuring processes, for both developing and developed countries. They further stressed the importance of not allowing vulture funds to paralyse the debt restructuring efforts of developing countries, and affirmed that those funds should not supersede a State's right to protect its people under international law (see A/69/423, annex, para. 29 and A/70/410, annex, para. 33).

52. In July 2014, some one hundred civil society organizations worldwide supported the establishment of an international mechanism for the restructuring of sovereign debt "based on the obligation of States to respect, protect and enforce human rights, both in their territory and extraterritorially".[61]

VII. Towards a multilateral framework on debt restructuring

53. In response to the increasing demand for international action, the General Assembly adopted on 9 September 2014 a landmark resolution entitled "Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes". Tabled at the initiative of the G-77 and China, a large majority of Member States voted in favour of the resolution.[62] In the resolution, the Assembly recognized the need for a legal framework that would facilitate the orderly restructuring of sovereign debts while allowing the re-

[57] Council of the European Union, "Council conclusions: speeding up progress towards the Millennium Development Goals", para. 41.

[58] Press release of the Paris Club on the threats posed by some litigating creditors to heavily indebted poor countries, 22 May 2007.

[59] See General Assembly resolution 63/239, annex, para. 60. In the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, annexed to General Assembly resolution 69/313, signatories reiterated their concern with non-cooperative creditors who have demonstrated their ability to disrupt timely completion of the debt restructurings (para. 98).

[60] "Protecting financial aid against 'vulture funds'", document CM/AS(2009)Rec1870 final, 12 June 2009, para. 3.

[61] See www.cels.org.ar/common/documentos/Deuda%20Externa%20y%20DDHH%20-%20CELS%20-ENG.pdf.

[62] Resolution 68/304, adopted by a vote of 124 in favour and 11 against, with 41 abstentions.

establishment of viability and growth without creating incentives that would inadvertently increase the risk of non-compliance. Such a framework should act as a deterrent to disruptive litigation that creditors could engage in during negotiations to restructure sovereign debts. In explicit reference to vulture funds, the Assembly highlighted that their activities forced indebted countries to divert many of their resources to handle such litigation, thereby undermining the purpose of the debt restructuring processes.

54. In September 2015, the General Assembly adopted resolution 69/319,[63] in which it declared that sovereign debt restructuring processes should be guided by the Basic Principles on Sovereign Debt Restructuring Processes, as included in the report of the Ad Hoc Committee (A/AC.284/2015/2).[64] According to the principle of sustainability, debt restructuring workouts should lead to stable debt situations while promoting sustained and inclusive economic growth and sustainable development. This relevant principle also requires minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights.[65]

55. By its general character, sustainability has become a key principle in the promotion and protection of economic development, growth and human rights.[66] In times of debt crisis, different interests are at play and a balance must be struck between them. The private interest of the outset creditor's rights cannot be protected at the expense of the public interest of protecting and promoting the sustained and inclusive economic growth and sustainable development of a country.

56. Against this background, the Human Rights Council, on 26 September 2014, adopted, by a large majority, another landmark resolution, entitled the "Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights: the activities of vulture funds", supported by a large majority. In resolution 27/30, the Council explicitly condemned the direct negative effect that the debt repayment to those funds, under predatory conditions, had on the capacity of Governments to fulfil their human rights obligations.[67] The Council called upon States to consider implementing legal frameworks to curtail predatory vulture fund activities within their jurisdictions.

VIII. Impact of the activities of vulture funds on human rights

57. Human rights monitoring bodies have contributed to articulating the linkage between the activities of vulture funds and human rights, in particular by focusing on the negative impact such activities have on the capacity of the State to fulfil its human rights obligations (see in particular A/HRC/14/21).[68] Empirical research has also analysed the negative economic and financial consequences derived from commercial litigation against

[63] Adopted by a vote of 136 in favour and 6 against, with 41 abstentions.

[64] The nine principles are sovereignty, good faith, transparency, impartiality, equitable treatment, sovereign immunity, legitimacy, sustainability and majority restructuring.

[65] For a comment, see J.P. Bohoslavsky and M. Goldmann, "An incremental approach to sovereign debt restructuring: sovereign debt sustainability as a principle of public international law", *Yale Journal of International Law*, 2016 (forthcoming).

[66] OHCHR, "Restructuring of sovereign debt: United Nations expert stresses General Assembly principles are binding", 10 September 2015.

[67] Adopted by a vote of 33 in favour and 5 against (Czech Republic, Germany, Japan, United Kingdom and United States), with 9 abstentions. It was co-sponsored by 79 additional States.

[68] The duty to fulfil imposes on the State an obligation to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of economic, social and cultural rights.

debt- distressed and poor States.[69] These studies show that such legal disputes are becoming increasingly common and costly for the States concerned.[70] Litigation and attachment attempts by vulture funds may pose difficulties for the State in accessing international capital markets and may also entail a significant decline in international trade for the debtor State.

58. In reality, the problem arises from the way in which vulture funds operate and the strategies they deploy to obtain disproportionate profits from speculating in sovereign debt and on how this affects the State's capacity to fulfil its human rights obligations.[71] According to the Independent Expert on the effects of foreign debt on human rights, the settlement of excessive claims by vulture funds against poor countries with unsustainable debt levels has a direct, negative effect on the capacity of the Governments of these countries to fulfil their human rights obligations, especially in terms of economic, social and cultural rights, particularly the rights to health, water and sanitation, food, housing and education.[72]

59. Through lengthy and costly litigation, vulture funds contribute to diverting States' resources from other, more pressing development, social and human rights issues (see A/HRC/14/21, para. 35). Protracted litigation may cause important delays in resolving the debt crisis and limit the State's capacity to commit resources and efforts necessary to bring the country out of the situation. It may worsen the already significant economic and financial consequences attached to the crisis and lead to policies that have a severe impact on the enjoyment of human rights.[73] Some of the most prominent negative impacts deriving from the activities of vulture funds are described in the following paragraphs.

Activities of vulture funds hinder the State's capacity to fulfil economic, social and cultural rights

60. Litigation by vulture funds represents a substantial burden on the budgets of already poor countries. Harmful conditions of loans or high and abusive interest rates may make repayment extremely difficult. The State having to repay far more than the amount originally borrowed may be obliged to redirect into debt service resources previously allocated for essential public services, also triggering cuts in public spending (ibid., para. 57). Such a course of action hinders the State's capacity to fulfil economic, social and cultural rights (i.e., to adopt appropriate measures towards their full realization) and, ultimately, has an impact on the economic growth and development of the country.[74]

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[69] The effects of disruptive litigation on the debt sustainability of HIPCs have been tracked on an annual basis by the Millennium Development Goals Task Force and the International Monetary Fund.

[70] Schumacher, "Sovereign defaults in court", p. 2.

[71] The assessment of how vulture funds hinder the capacity of recovery of States undergoing a debt crisis would imply systematically collecting and analysing data on the number of lawsuits filed, the debt service burden and budget allocations. It would also require a more detailed follow-up and analysis of relevant economic and social indicators.

[72] "'Vulture funds' – United Nations expert on foreign debt welcomes landmark law to address profiteering", press release, 20 April 2010.

[73] A debt crisis may entail a great deal of economic destruction and economic reversal along with sacrifice in human rights terms. A country can lose 5-15 per cent of its GDP. Li Yuefen, presentation to the Advisory Committee.

[74] The State's obligation to fulfil requires positive measures by the State when other measures have not succeeded in ensuring the full realization of these rights and can entail issues such as public expenditure, governmental regulation of the economy, the provision of basic public services and infrastructure, taxation and other redistributive economic measures. OHCHR, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions* (United Nations publication, Sales No. E.04.XIV.8), p. 18.

61. Human rights monitoring bodies have analysed how an excessive burden of high external debt repayments can significantly reduce the resources available for social investment. In fact, it has been demonstrated that in many countries debt repayment is often carried out at the expense of basic human rights, including the rights to food, health, education, adequate housing and work. In the case of Ecuador, for example, the Committee on Economic, Social and Cultural Rights noted that the high percentage of the annual national budget (around about 40 per cent) allocated for foreign debt servicing seriously limited the resources available for the achievement of effective enjoyment of economic, social and cultural rights (see E/C.12/1/Add.100, para. 9).

62. The case of Malawi may be extreme, but it shows how debt repayment affected the country's capacity to create the necessary conditions for the realization of economic and social rights. In 2002, the Government decided to sell the maize from its national food reserve agency with the aim of raising funds to repay loans. Following a poor harvest that year, 7 million people, of a population of 11 million, were left facing a serious food shortage (see A/HRC/11/10, para. 30).

Activities of vulture funds jeopardize international poverty reduction initiatives

63. The ability of vulture funds to jeopardize the objectives of the International Monetary Fund and the World Bank HIPC Initiative is striking, particularly bearing in mind that it aims at ensuring the debt sustainability of poor countries.[75] In a number of cases, it has been clearly demonstrated that resources freed up for development and poverty reduction programmes were used to service debt owed to vulture funds. This situation has led human rights monitoring bodies to urge the concerned State to reallocate international development aid and other resources to priority sectors and to ensure that international development aid is utilized for the progressive realization of the rights to an adequate standard of living see (see E/C.12/COD/CO/4, para. 29).

64. A good example is the case of the Democratic Republic of the Congo. A District Court in the United States ruled in 2014 that it had to pay nearly $70 million to a vulture fund for an $18 million debt acquired in 2008, dating back to the regime of former dictator Mobutu Sese Seko in the 1980s.[76] On the basis of the improved fiscal situation resulting from international debt reduction programmes, the country was ordered to pay the claims of the hedge funds. This example shows how domestic rulings can clearly undermine the intent of the HIPC Initiative, which is often not taken into account by national courts.[77]

65. This is not an isolated case, however. In 2013, the World Bank and IMF reported that commercial litigation was ongoing against eight HIPC countries. The report highlighted that such legal struggles not only had adverse financial consequences for the poorest countries, but also took up considerable time and resources of debtor government authorities.[78]

66. Thus, under present circumstances, funds obtained by the poorest countries from debt relief may easily be channelled to repay an outstanding loan pursuant to court rulings. As a result of aggressive, disruptive litigation, a debtor State may be forced to divert money

[75] The scheme was first launched in 1996 and was supplemented in 2005 by the Multilateral Debt Relief Initiative. More information is available from www.imf.org/external/np/exr/facts/hipc.htm.

[76] *Themis Capital, LLC and Des Moines Investments Ltd., Plaintiffs v. Democratic Republic of Congo and Central Bank of the Democratic Republic of the Congo, Defendants*, 14 July 2014.

[77] *Taking Stock of the Global Partnership for Development: Millennium Development Goals Gap Task Force Report 2015* (United Nations publication, Sales No. E.15.I.5), p. 46.

[78] *The State of the Global Partnership for Development: Millennium Development Goals Gap Task Force Report 2014* (United Nations publication, Sales No. E.14.I.7), p. 41.

earmarked for poverty reduction and basic social services, such as health and education, to settling the substantial claims of vulture funds.[79]

Activities of vulture funds contribute to increased debt service

67. Debt burden adversely affects the protection of economic and social rights not only because of the diversion of funds from social purposes to debt servicing,[80] but also because of the situation of dependency in which it puts the debtor States. It has been observed that such dependency "might result in a factual loss of sovereignty over their economic and social policies and in the imposition of policies with potentially negative consequences for the protection of social rights".[81]

68. Against this background, a reduction in debt service and debt cancellation can effectively create the conditions necessary for the realization of economic, social and cultural rights. Facts show that such measures have allowed many countries to invest more in public services such as health care, education, water and sanitation and to abolish user fees for some of these services that were previously introduced as part of austerity measures imposed by the international financial institutions.[82] However, it remains a controversial issue whether a State might be under an obligation not to repay its debt to vulture funds if it can do so only at the expense of neglecting the basic social needs of its people.

69. Under present circumstances, debtor States often have little choice but to prioritize their contractual debt obligations, contrary to what human rights law would require. This suggests that a more human rights-centred approach is needed. A State's obligation to ensure the enjoyment of at least the minimum core of economic and social rights should take priority over its debt service obligations, particularly when such payments further limit the country's ability to fulfil its human rights obligations (see E/C.12/GRC/CO/2, para.8). This is particularly the case when increased debt service is derived from harmful conditions linked to speculative claims that further limit the country's ability to fulfil its human rights obligations.

70. It is then a logical consequence of the evolution of human rights law that a State cannot decide to service debt at the expense of meeting its human rights obligations (see A/70/275). Sovereign debt workouts must not lead to violations of economic or social rights or prevent the attainment of internationally agreed development goals. The United Nation Conference on Trade and Development (UNCTAD) has observed in this regard that "full debt sustainability is only achieved when debt service does not entail intolerable sacrifices for the well-being of society".[83]

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[79] As has been observed, they "profiteer at the expense of both the citizens of HIPCs and the taxpayers of countries that have supported international debt relief efforts". See A/HRC/14/21, para. 69.

[80] In 2006, for example, 10 developing countries spent more on debt service than on public education, and in 52 countries debt servicing amounted to more than the public health budget. *Delivering on the Global Partnership for Achieving the Millennium Development Goals: Millennium Development Goals Gap Task Force Report 2008* (United Nations publication, Sales No. 08.I.17), executive summary, p. x.

[81] S. Michalowski, "Sovereign debt and social rights—legal reflections on a difficult relationship", *Human Rights Law Review*, vol. 8, No. 1 (January 2008), p. 39.

[82] C. Lumina, "Sovereign debt and human rights", in *Realizing the right to development: essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (United Nations publication, Sales No. E.12.XIV.1, pp. 289 and 294.

[83] UNCTAD, *Sovereign Debt Workouts: Going Forward. Roadmap and Guide*, April 2015, p. 24.

Activities of vulture funds undermine the realization of the Sustainable Development Goals

71. Lawsuits brought by vulture funds may slow down the progress made by both developed and developing countries in realizing the Sustainable Development Goals, in spite of strong support from the international financial institutions. Particularly relevant in this context is goal 17: "Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development". This goal targets assisting States in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and addressing the external debt of highly indebted poor countries to reduce debt distress.

IX. Strengthening a human rights-based approach

72. Vulture funds take advantage of the lack of adequate regulation of a financial system that has traditionally been based on purely commercial interests and foreign to human rights-based approaches and concerns. Though relevant actions have been undertaken in previous years, and though human rights monitoring bodies have provided some valuable guidance in striking a better balance between the different interests at stake, human rights should be further mainstreamed in this context.

73. The international community should work to provide the basis for shaping a more coherent framework where both commercial interests and human rights concerns are accommodated. In this context, the interlinkages between an enhanced capacity of States to fulfil economic, social and cultural rights and sustainable development should be strengthened.[84]

74. Human rights law provides a number of standards that are applicable in this context and provides guidance to States, both individually and at the international level, on how to tackle the negative impact of the activities of vulture funds on the full enjoyment of human rights and the right to development.

At the international level

75. The adverse impact of the activities of vulture funds on human rights cannot be effectively addressed in an isolated or partial manner. States are expected to cooperate in good faith in the process leading to the establishment of an international mechanism for sovereign debt restructuring. In this context, they should ensure that the obligation to service their debt does not lead them to derogate from their minimum core obligations with respect to economic and social rights.[85] Restructuring processes should aim at reaching an agreement that enables States to service their debts without compromising their capacity to fulfil their human rights obligations.[86]

At national level

76. States should undertake concrete steps aimed at enacting human rights-compliant national legal frameworks to regulate the activities of vulture funds that take place within their jurisdiction, particularly disruptive litigation concerning sovereign debt. National laws should expressly exclude the possibility of seizing development cooperation funds, as well

[84] See, in general, T. Karimova, *Human Rights and Development in International Law* (Routledge, 2016), pp. 31-86.

[85] Guiding principles on foreign debt and human rights (A/HRC/20/23 and Corr.1, annex), principle 18.

[86] Ibid., principle 53.

as undertaking litigation against States in debt distress. It is a good practice to limit the value of the claim to the discounted price originally paid by the creditor. In addition, States should ensure that vulture funds domiciled in their territory or operating in their jurisdiction respect human rights throughout their operations.[87] Domestic regulations should also recognize States' extraterritorial obligation to fulfil economic, social and cultural rights.[88]

77. National laws should provide the basis for regulating the behaviour of abusive non-cooperative creditors in restructuring processes by providing that they cannot enjoy better treatment than those that are acting in good faith.[89] Guarantees should be provided that the amount of debt recoverable by a vulture fund cannot exceed that recovered by other, cooperative creditors.[90]

78. Steps should be taken to regulate the trade of sovereign debt on the secondary market and to guarantee transparency. In the absence of an international restructuring mechanism, all efforts must be directed towards achieving a negotiated settlement.[91]

79. Finally, States should assess whether servicing debt to vulture funds would result in derogation from their minimum core obligations with respect to economic, social and cultural rights. Debt sustainability analysis should include an evaluation of the level of debt a country can carry without undermining its capacity to fulfil its human rights obligations and the realization of the right to development.[92]

Management of vulture funds

80. The Guiding Principles on Business and Human Rights intend to foster respect for human rights among States, business enterprises, financial institutions and other actors. They apply to commercial entities operating in the financial sector. Vulture funds thus also have a responsibility to respect human rights.[93] This specifically includes the responsibility to "avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur".[94]

81. The responsibility to respect human rights does not require a direct link of causality between the activities of vulture funds and their negative impact.[95] Vulture funds bear a duty of due diligence, which entails identifying, preventing, mitigating and accounting for human rights impacts. In addition, vulture funds should put in place policies and systems to "know and show" that they respect human rights throughout all their activities.[96] This

[87] Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex), principle 3. On 26 June 2014, the Human Rights Council adopted resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.

[88] See Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011), principle 32.

[89] This principle encompasses the basic requirements of fairness, honesty and trustworthiness. UNCTAD, *Sovereign Debt Workouts*, p. 22. See also UNCTAD, Principles on Promoting Responsible Sovereign Lending and Borrowing (2012).

[90] Guiding principles on foreign debt and human rights, principle 61.

[91] Ibid., principle 59.

[92] Ibid., principles 8, 48 and 65.

[93] Ibid., principle 11.

[94] Ibid., principle 13 (a).

[95] Ibid., principle17. See also OHCHR, reply to the request of the Chair of the Organization for Economic Cooperation and Development Working Party on Responsible Business Conduct on the application of the Guiding Principles to the financial sector, 27 November 2013. Available from www.ohchr.org/Documents/Issues/Business/LetterOECD.pdf.

[96] Guiding Principles on Business and Human Rights, principle 15.

includes assessing the actual or potential negative impact on the economic and social welfare and sustainable development of the countries targeted by their investment strategies.

82. Although the general framework described above is fully applicable to vulture funds, difficulties may arise in its implementation in practice. In fact, it is not expected that vulture funds will voluntarily undertake to respect the Guiding Principles and adjust their behaviour accordingly, which underscores the need for appropriate national and international regulation.

X. Conclusions and recommendations

83. **Vulture funds are inherently exploitative, since they seek to obtain disproportionate and exorbitant gains at the expense of the full realization of human rights, particularly economic, social and cultural rights, and the right to development. Seeking the repayment in full of a sovereign debt from a State that has defaulted, or is close to default, is an illegitimate outcome. In a debt crisis, more than financial obligations are at stake.**

84. **The duty to observe due diligence to prevent a negative impact on and potential violations of economic, social and cultural rights applies to all States and stakeholders, including the management of vulture funds. Therefore, assessments of the impact of their activities on the enjoyment of economic, social and cultural rights should be made systematically.**

85. **Excessive claims awarded to vulture funds have allowed them to reap profits at the expense of the welfare and sustainable development of the poorest countries, without taking due account of the negative consequences of such actions on the State's capacity to fulfil its human rights obligations.**

86. **The Advisory Committee recommends to the Human Rights Council that it:**

(a) **Maintain the issue of vulture funds and human rights on its agenda in order to assess the impact of their activities on economic, social and cultural rights and the right to development, and to support further initiatives aimed at identifying and curtailing illegitimate activities by vulture funds;**

(b) **Explore further ways of mainstreaming human rights in the context of debt restructuring workouts and operationalizing processes aimed at assessing and monitoring the negative impact of the activities of vulture funds on the full enjoyment of economic, social and cultural rights and on the realization of the Sustainable Development Goals;**

(c) **Commend the work of the African Legal Support Facility, and call upon States to support the expansion of this mechanism so as to assist developing countries in litigation with vulture funds and other similar, speculative ways of manoeuvring on financial markets;**

(d) **Adopt a new resolution, following the examination of the present report, in which it would entrust the Advisory Committee with the follow-up of the issue in order to make concrete recommendations to States and relevant stakeholders. A further study reviewing relevant national legislation and case law, as well as good practices would help States in the process of enacting further regulations.**

87. **The Advisory Committee recommends to Member States that they:**

(a) **Enact legislation aimed at curtailing the predatory activities of vulture funds within their jurisdiction. Domestic laws should not be limited to HIPCs but should cover a broader group of countries and apply to commercial creditors that refuse to negotiate any restructuring of the debt. Claims that are manifestly disproportionate to the amount initially paid to purchase the sovereign debt should not be considered. The laws in Belgium and the United Kingdom provide valuable examples for other States in drafting national laws aimed at limiting the practices of vulture funds;**

(b) **Adopt measures aimed at limiting disruptive litigation by vulture funds in their jurisdiction. National courts or judges should not give effect to foreign judgments or conduct enforcement procedures in favour of vulture funds that are pursuing a disproportionate profit. It is a good practice to limit the value of vulture funds' claims to the discounted price originally paid for the bonds;**

(c) **Enhance and promote transparency by ensuring that the owners and shareholders of vulture funds are disclosed and made subject to appropriate taxation. Transparency on sovereign debt in the secondary market should be particularly ensured. Courts and other relevant national authorities must have access to all relevant documents and information on the amounts and the identity of the creditors;**

(d) **Ensure that adjudication bodies, including the International Centre for Settlement of Investment Disputes and the Permanent Court of Arbitration, integrate in their practices the duty of arbitrators to assess at a preliminary stage the bona fides of vulture fund claims as well as the standing of the claimant, by requiring the disclosure of the details of the debt;**

(e) **Ensure that the principle of bona fides is adequately reflected in national legislation and applied by domestic courts in relation to litigation concerning sovereign debt restructuring processes by providing that abusive creditors do not enjoy better treatment than those cooperative creditors that are acting in good faith.**

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Report of the Independent International Commission of Inquiry on the Syrian Arab Republic

Summary

The cessation of hostilities agreement that came into effect on 27 February 2016 offered a glimmer of hope to those seeking a path towards a political resolution of the conflict in the Syrian Arab Republic. In the weeks that followed, there was a de-escalation of armed violence across much of the country, providing millions of civilians with some respite from the brutal war.

Since late March, however, there has been a marked upsurge in the fighting, with indiscriminate and disproportionate attacks on civilian-inhabited areas, particularly through pounding aerial bombardments. Nearly 600,000 people are now under siege, with fears growing for those living in Aleppo city. Humanitarian access, including to provide life-saving essentials such as surgical kits and medicine, is currently being blocked by some of the belligerents.

Medical workers and facilities have come under sustained and targeted attack. As a consequence, there has been a severe weakening of health-care infrastructure, particularly in areas of the country not under government control, with devastating consequences for civilians.

Away from the battlefield, civilians and hors de combat fighters continue to be disappeared, taken hostage, tortured and subjected to sexual violence, often in the context of detention. Unlawful killings, including deaths in detention and summary executions, remain a hallmark of this blood-soaked conflict.

Without a return to the peace process, the Syrian conflict, and the violations and abuses it has nourished, will continue. The sense of hope engendered earlier this year must be revitalized. In the meantime and at all times, the call to respect human rights and international humanitarian law, and to seek accountability for their infringement, must continue to resonate.

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I. Introduction

1. In the present report, submitted pursuant to Human Rights Council resolution 31/17, the Independent International Commission of Inquiry on the Syrian Arab Republic presents its findings based on investigations conducted from 10 January to 20 July 2016.[1] The present report should be read in conjunction with previous reports of the Commission.[2]

A. Challenges

2. The Commission's investigations remain curtailed by the denial of access to the Syrian Arab Republic.

B. Methodology

3. The methodology employed by the Commission was based on standard practices of commissions of inquiry and human rights investigations. The Commission relied primarily on first-hand accounts.

4. The information contained herein is based on interviews conducted in the region and from Geneva. Since September 2011, the Commission has conducted 4,575 interviews.

5. Photographs, video recordings, satellite imagery and medical records were collected and analysed. Reports from Governments and non-governmental sources, academic analyses and United Nations reports formed part of the investigation.

6. The standard of proof is met when the Commission has reasonable grounds to believe that incidents occurred as described.

II. Conflict dynamics

7. In February 2016, various parties to the conflict reached an agreement to reduce violence in the country. The cessation of hostilities agreement offered hope that a path to ending the armed conflict was possible. Led by the United States of America and the Russian Federation, the International Syria Support Group brokered this agreement between government forces and anti-Government armed groups. It had the dual focus of instituting an immediate suspension of fighting and facilitating humanitarian access to besieged and hard-to-reach areas. Terrorist organizations listed by the United Nations were not party to the agreement.

8. Humanitarian aid deliveries became possible to several besieged and hard-to-reach areas. Since late February, life-saving treatments have been delivered to besieged areas, benefiting more than 1.5 million civilians. A United Nations-led task force operating within the cessation of hostilities agreement framework has monitored humanitarian aid access and helped to facilitate expanded access for aid agencies to locations that had previously been cut-off. By 29 June, all 18 besieged neighbourhoods had received humanitarian assistance at least once in 2016 — the first time since November 2012 that humanitarian assistance

[1] The commissioners are Paulo Sergio Pinheiro (Chair), Vitit Muntarbhorn, Carla Del Ponte and Karen Koning AbuZayd.

[2] A/HRC/S-17/2/Add.1, A/HRC/19/69, A/HRC/21/50, A/HRC/22/59 and Corr.1, A/HRC/23/58, A/HRC/24/46, A/HRC/25/65, A/HRC/27/60, A/HRC/30/48 and Corr.1 and A/HRC/31/68.

reached all besieged areas at least once in the calendar year. Where land routes remained blocked, relief supplies were dropped from the air. Dozens of United Nations-assisted airdrops into western Dayr az-Zawr city, for example, were able to provide temporary relief assistance to thousands of civilians.

9. Despite these initially encouraging signs, there has been a marked upsurge in fighting since late March, with grave consequences for civilians. Pro-Government forces, allegedly targeting locations occupied by the terrorist groups Islamic State in Iraq and the Levant (ISIL) and Jabhat al-Nusra, maintained their aerial and artillery bombardments on opposition-held territories, including Idlib city, Maarat Al-Numan and eastern Aleppo city throughout the reporting period. In many instances, anti-Government armed groups have been targeted as well, resulting in retaliation and a return to fighting. Government forces launched offensive operations against opposition-held locations in the Aleppo and Damascus countryside. Intermittent shelling by anti-Government armed groups on Government-controlled areas of Aleppo has also been reported.

10. Direct external support to belligerents, as well as support filtered through proxies, continues. This has fuelled further violence and undermined prospects for a peaceful settlement. Support provided by different States to their respective protégés has had a far more significant effect than support from other sources. Such backing ensures the fragmentation and general decentralization of the conflict, making the potential for a coherent diplomatic resolution of the crisis less attainable.

11. On 14 March, the Russian Federation announced that it would withdraw a significant part of its military assets deployed in the Syrian Arab Republic since September 2015. The Russian presence in the Latakia airbase and Tartous naval base would reportedly remain, and there would be continued involvement in concerted action against the designated terrorist groups ISIL and Jabhat al-Nusra. Russian aerial support to government forces and affiliated militias continued, with varying intensity, notably in Aleppo and Idlib governorates.

12. Government forces continue to maintain an important operational edge and initiative over anti-Government armed groups and Jabhat al-Nusra on a number of front lines and in a number of localities. While losing some territory in southern Aleppo countryside, government forces have pushed through strategic locations around Aleppo city. They have taken control of the Castello road, the only access point to opposition-held areas of the city. The road is now within the direct firing range of government forces. If fully realized, a siege of Aleppo would put an estimated 300,000 civilians under siege.

13. On 27 March, government forces were able to wrest control of Palmyra, Homs, from ISIL, providing an added strategic and symbolic advantage. In Rif Damascus, considered to be the vital belt around the capital, government forces made slow but strategic gains in eastern Ghouta and the besieged town of Daraya to the west. Negotiations are also reportedly ongoing to evacuate the Yarmouk camp for Palestinian refugees, located to the south of Damascus.

14. In recent months, anti-Government armed groups continued to fight on multiple fronts. While they made modest gains — for example, in the southern Aleppo countryside — the groups have either stagnated or retreated along some vital front lines. Extensive aerial operations and support by the Russian Air Force to government forces increased infighting among various armed groups, including Jabhat al-Nusra, and the loss of crucial supply roads have generally weakened the posture of the anti-Government armed groups. Infighting between Jaysh al-Islam and Faylaq ar-Rahman reportedly led to hundreds of casualties in early June and is said to have facilitated advances of government forces into the town of Douma in eastern Ghouta. On 27 May, in the northern Aleppo countryside,

anti-Government armed groups lost strategic territory to ISIL on the Azaz and Maree axis along the Turkish border.

15. Jabhat al-Nusra continues to play a major combat role in Idlib and Aleppo. The group maintained operational links with some anti-Government armed groups in various offensives, particularly against government forces and ISIL. However, Jabhat al-Nusra's capacity has been diminished by extensive air strikes by pro-Government forces and increased infighting, particularly in Idlib, Rif Damascus and Dara'a. Political and governance differences are said to be widening with other armed groups in some of the localities, including Idlib and Aleppo. Air strikes by pro-Government forces targeting Jabhat al-Nusra have also weakened other armed groups.

16. Benefiting from extensive aerial operations and support by the international coalition against ISIL, the Syrian Democratic Forces — composed of the Kurdish People's Protection Units (YPG) and other Arab and Assyrian armed groups — have made significant territorial strides in southern areas Hasakah governorate and eastern areas of Aleppo governorate. The Syrian Democratic Forces have, however, made smaller advances towards the de facto ISIL capital of Raqqah city than they had earlier envisaged.

17. Facing pressure on multiple fronts and by a number of belligerents, ISIL continued to lose territory in the first half of 2016. In the south of Hasakah governorate, the Syrian Democratic Forces wrested control of the large Shaddadi region, putting further strain on the terrorist group's supply routes to Iraq. In north-east Aleppo, and with extensive aerial operations and support from the international coalition against ISIL, the Syrian Democratic Forces managed to fully encircle the strategic ISIL-held town of Minbij. With ISIL not allowing civilians to leave, thousands remain trapped inside the town.

18. While making moderate gains around Dayr az-Zawr city and against various armed groups in northern Aleppo, ISIL has lost significant territory to government forces in Palmyra, Homs. With those losses, the control exerted by ISIL over northern border areas and access points with Turkey appears to have been almost completely reversed. Nevertheless, the group maintains the capacity to attack on a number of fronts. It has increasingly employed explosive devices and suicide bombers in the Government-controlled areas of Latakia, Damascus and Homs.

19. As violence resurges inside the Syrian Arab Republic, the number of refugees and internally displaced persons climbs ever higher. About 6.6 million Syrians, many of them women and children, have been displaced within the country's borders. Most live in official or makeshift camps along the borders. Some camps have been shelled or aerially bombarded by belligerents. Makeshift camps offer little support to the internally displaced, with health services and education for children largely absent. That civilians continue to move into these camps underlines the grave dangers they face in the areas from which they have fled.

20. Almost 5 million Syrians have crossed the border to become refugees. The majority — more than 4 million — now live in neighbouring countries. According to the Office of the United Nations High Commissioner for Refugees, only 10 per cent of Syrians seeking safe haven from conflict have sought refuge in Europe. Many high-income countries outside of Europe have not provided any resettlement places to Syrian refugees.

III. Resurging battlefield violence

A. Living under fire

21. In areas where it applied, the cessation of hostilities initially resulted in a significant decrease in incidents of armed violence. As of late March, a resurgence of violence, including aerial bombardments and shelling attacks, resulted in the loss of hundreds of lives and massive destruction of infrastructure indispensable for civilian life. In areas where the agreement did not apply — areas controlled by ISIL or Jabhat al-Nusra — attacks continued unabated.

22. Aerial bombardments in densely populated areas have a devastating impact on civilians, both in terms of the human toll and the constant fear for their lives under which civilians are forced to live. On 31 March, strikes by pro-Government forces in Deir al-Asafir, an area outside Damascus controlled by anti-Government groups, hit a school, a hospital and a mosque. At least 31 people were killed, including 3 children and their parents. Several children were killed in the hospital after being evacuated from the school. The strikes caused extensive damage to the hospital, the school, the mosque and several homes.

23. Venues essential to the survival of the civilian population were the object of aerial attacks in opposition-held areas. An attack on a shop on 19 April in Kafr Nabl, Idlib, killed seven people, including three children and shoppers in a nearby fish market. Within minutes another attack in Maarat al-Numan, only 12 kilometres away, killed 37 persons in a vegetable market. On 14 June, pro-Government forces bombed Al-Hajj bridge, which connects eastern Aleppo to western Aleppo, killing at least 4 persons and injuring another 15, including women and children.

24. Internally displaced persons are among the most vulnerable to violations. Having fled from their homes to seek safety, many find themselves under attack in the camp where they sought refuge. On 30 January, pro-Government forces fired rockets to Aubin camp in Latakia, killing two people. On the same day, the Al-Yamedia camp, also in Latakia, was shelled. While there were no casualties, most of the camp's residents fled, fearing future attacks. On 2 June, shelling of the Al-Yamedia camp border crossing resulted in the death of two internally displaced men and injured a worker from a non-governmental organization. There is no information suggesting that there were military targets inside or in the vicinity of the camps.

25. In Government-held areas, civilians were terrorized by ISIL attacks. From February to June, indiscriminate attacks by ISIL claimed unprecedented numbers of casualties. The attacks, all carried out using vehicle borne improvised explosive devices and suicide bombers, invariably took place in crowded civilian areas. On 26 January, the detonation of a vehicle borne improvised explosive device at a security checkpoint, followed by a suicide bombing among the crowd that gathered after the first explosion, killed 22 persons and left another 100 injured in the Homs residential neighbourhood of Al-Zahra.

26. On 21 February, a series of explosions in Sayda Zaynab, outside Damascus, and car bombings in Homs killed 140 people. The explosions took place when shoppers were out and children were leaving school. An eyewitness described scenes of panic as the smoke of the explosions dissipated and survivors saw the carnage around them. The attack followed a double suicide attack by ISIL on Sayda Zaynab on 31 January that killed 40 civilians. The first explosion took place at a bus station and the second in a residential area.

27. On 23 May, a series of suicide bombings and detonations of vehicle borne improvised explosive devices killed at least 120 persons and injured another 200 in Jableh and Tartous, Latakia. While both cities are regime strongholds and Latakia hosts a Russian airbase, there are no indications that the attacks were directed towards a military target. Rather, the attacks targeted hospitals and a bus stop, and seem to have been a reaction to the loss of territory that ISIL had suffered in the preceding months.

28. In areas controlled by ISIL, civilians bear the brunt of explosive devices, as the group plants landmines in areas under its control, including as it retreats from lost territory. The Commission received reports of civilians being killed and injured by ISIL landmines in March and April in Al-Mabrouka, Hasakah; Tal Akhdar and Derb Hasan, Ar-Raqqah; and Merweh, Aleppo.

29. After a period of calm, anti-Government armed groups have resumed shelling of the Al-Jamiliyah neighbourhood in Aleppo city, resulting in civilian casualties. A resident of the neighbourhood recounted how on 28 April "rockets came from all directions like rain", killing at least three residents and causing panic and chaos among the population. The rockets hit a queue of people who were buying food, and locations next to a mosque and a school.

30. The Commission continues to investigate allegations of use of chemical weapons. It has received reliable information on the use of chlorine gas in the Sheikh Maqsoud neighbourhood of Aleppo city on 5 April, when four persons, including two civilians, were taken to the hospital with symptoms of chlorine gas inhalation. On the same day, Sheikh Maqsoud was under heavy shelling for several hours. A resident described how a rocket killed six members of his family, including his wife and three children, in their home.

31. On 19 July, at least 73 civilians, many of them children, were reportedly killed near Minbij, Aleppo, during international coalition air strikes against ISIL. The Commission takes note that the United States has opened a formal investigation into the killing of civilians on 19 July, the same day it carried out air strikes against ISIL positions.

B. Living under siege

32. Nearly 600,000 civilians in Damascus, Rif Damascus, Dayr Az-Zawr, Homs and Idlib governorates continue to suffer brutal conditions created by protracted sieges. While government forces are responsible for the majority of sieges countrywide, ISIL has surrounded the Government-held neighbourhoods of Dayr Az-Zawr city since June 2014 and Jabhat al-Nusra, acting alongside anti-Government armed groups, encircled the Shia enclaves of Foua'a and Kafria, Idlib, in March the following year. More than 6 million civilians currently struggle to survive in besieged and hard-to-reach communities. Despite some improvements in humanitarian access to besieged areas — achieved through the cessation of hostilities agreement — the absence of sustained cooperation by parties to the conflict continues to cause acute malnutrition and, increasingly, death.

33. International law prohibits the use of starvation as a method of warfare, as well as the denial to civilians of safe passage from besieged areas.

34. Government forces have laid siege to the western Ghouta suburb of Daraya, Rif Damascus, since November 2012. Residents described subsisting on harvest crops and living without electricity over the years since. Water lines to Daraya were cut in 2013, forcing inhabitants to use unsanitary wells for both hygiene and consumption. As in Douma, eastern Ghouta, medicines for chronic illnesses were not available. In Douma, parts of which have been besieged since 2013, residents recounted how Syrian forces allowed entry of no more than 25 per cent of required medical supplies. Often, remaining physicians in both areas are forced to practice outside their areas of specialty.

35. On 12 May, a convoy led by the United Nations, the International Committee of the Red Cross and the Syrian Arab Red Crescent carrying essential medical supplies, nutrition items and hygiene materials headed for Daraya was turned back at a checkpoint, despite previous assurances by the Government that it would be allowed to pass. On 1 June, five trucks containing baby formula, vaccines and non-food items were allowed to enter the town, marking the first such delivery in over three and a half years. On 9 June, the United Nations and the Syrian Arab Red Crescent were ultimately granted access to provide foodstuffs to Daraya. The following day, government forces heavily bombarded civilian-inhabited areas, seriously hindering the distribution of vital aid for another three days.

36. Before a ceasefire was reached in December 2015, government forces had denied the entry of medical supplies into the Al-Waer neighbourhood of Homs city for three years. Currently, government forces impose a ban on fuel, and residents in Al-Waer described using electric heaters to burn wood, plastic or clothing for cooking. During the winter, elderly persons died, having succumbed to the harsh weather. By spring, residents resorted to eating grass and wild plants. On 14, 16 and 18 July, teams comprising staff from the United Nations, International Committee of the Red Cross and the Syrian Arab Red Crescent were able to deliver crucial shipments of food and health items to Al-Waer.

37. Since Jabhat al-Nusra and anti-Government armed groups tightened their siege around Foua'a and Kafria in March 2015, both towns have suffered shortages of food and fuel and a lack of electricity and water. In September 2015, an agreement was reached between government forces and anti-Government armed groups, including Ahrar al-Sham, concerning the Rif Damascus mountain towns of Madaya and Zabadani and the Idlib villages of Foua'a and Kafria. Parties to the agreement continue to use the delivery of humanitarian aid as a tool for political bargaining, which has left all four localities deprived of humanitarian assistance since 30 April. Incidents of malnutrition are increasing in those areas. The Commission continues to receive accounts of deaths by starvation in Madaya, where government forces carry on using starvation as a weapon of war.

38. In Madaya, families described cases of infant malnutrition resulting from the difficulties that starving mothers have in producing sufficient breast milk and from a lack of baby formula. In Al-Waer, the price of powdered milk, when available, is so exorbitant that one father recalled diluting the milk for his one-and-a-half-year-old daughter with water so as to not run out. Over the reporting period, at least three children between the ages of 5 and 6 died in Madaya as a result of malnutrition and disease.

39. Pre-war economies throughout besieged areas have all but collapsed and given way to extortive siege economies, with devastating impact. As the only entry points into besieged areas, checkpoints continue to serve as opportunities for extortion, where belligerents profit off of the desperation of confined populations. Residents in eastern Ghouta, Dayr Az-Zawr and Homs detailed price surges for basic commodities. The profits of siege economies may also provide financial incentives to deny truces.

40. The Security Council, through its resolutions 2165 (2014), 2191 (2014) and 2258 (2015), has authorized the unconditional delivery of humanitarian assistance, including medical assistance, to besieged and hard-to-reach communities countrywide. Despite marked progress, however, no sieges have been lifted in recent months. During the period under review, the Office for the Coordination of Humanitarian Affairs observed an increase of 103,500 Syrians living in besieged areas, as well as 870,000 more civilians in areas considered hard to reach.

41. The Commission is gravely concerned about the at least 300,000 civilians residing in eastern Aleppo city, where the last remaining supply line of Castello Road was cut by government forces in July, and about civilians in Minbij, Aleppo, living under ISIL control

who are now encircled by advancing Syrian Democratic Forces. A further 70,000 to 90,000 displaced Syrians remain trapped in an uninhabitable desert area near the southern border.

C. Assaults on medical care

42. Since March 2011, attacks on medical care have characterized the unrest, and now conflict, in the Syrian Arab Republic. Medical workers, including doctors, dentists, nurses, paramedics, ambulance drivers and laboratory technicians, have been attacked for attending to the wounded. Many have been killed and injured. Others have fled with their families across the Syrian borders, seeking refuge. Hospitals, clinics and ambulances have been destroyed. As a consequence, there has been a severe weakening of health-care infrastructure, particularly in areas of the country not under government control. This has had a disastrous impact on the civilian population, with particularly adverse consequences for infants, young children, pregnant women, lactating mothers, the disabled and those with chronic illnesses.

43. In the past six months, there has been a surge of attacks affecting people and places providing medical care. The majority of the attacks have been carried out by pro-Government forces. The pattern of attacks, and in particular the repeated bombardments, strongly suggests that there has been deliberate and systematic targeting of hospitals and other medical facilities during this reporting period. Some anti-Government armed groups and the terrorist group ISIL have also attacked medical workers and facilities in Government-held areas.

44. Perhaps nowhere has the government assault on medical care been felt more strongly than in the opposition-controlled areas of Aleppo city and governorate, where at least 20 hospitals and clinics have reportedly been destroyed since January. Many of those attacks have caused the death of medical personnel and first responders.

45. In mid-January, government forces barrel-bombed Al-Sakhour hospital in Aleppo. The barrel bomb landed close to the hospital, which serves patients with mental health disorders, killing at least two patients and injuring staff and other patients. The hospital has reportedly been bombarded over a dozen times since early 2014.

46. In late January and early February, government forces reportedly attacked a field hospital in Maskan village, as well as a field hospital and rehabilitation centre in Anadan. Several staff members, including a nurse, were killed in the attack on the Anadan hospital. In early February, planes belonging to pro-Government forces bombarded a field hospital, a rehabilitation centre and a dialysis centre in Tal Rifat in northern Aleppo. Medical staff and patients were injured and the facilities closed, leaving the area with no medical care.

47. On 15 February, pro-Government planes bombarded the street outside a maternity hospital in Azaz in northern Aleppo governorate. Approximately five civilians in the areas outside the hospital were killed, including two guards who were on staff. An interviewee described his relief that none of the infants lying in the incubators had been killed. The hospital itself was severely damaged and closed.

48. On 27 April, there were three aerial bombardments of the area surrounding the Al-Quds hospital, supported by Médecins sans frontières, in the Al-Sukari neighbourhood of Aleppo city. Al-Quds had been the main paediatric referral hospital in Aleppo governorate. Each bombardment struck progressively closer to the hospital, the final one destroying an apartment building, in which many hospital staff resided, only 10 metres from the hospital. A doctor, a dentist, two nurses, a security officer and a maintenance technician were killed, as were approximately 55 people living in the apartment building, which collapsed into rubble. More than 100 people were injured. Essential equipment, including seven

incubators, and drugs were destroyed. The hospital, notably its emergency room, paediatric unit and laboratory, sustained such damage that the hospital was forced to close.

49. Less than a week after the attack on Al-Quds hospital, the Security Council unanimously adopted its resolution 2286 (2016), in which it called for an end to attacks on health-care workers and facilities and affirmed the principle, codified in the Geneva Conventions of 1949, that medical personnel and infrastructure are not to be targeted during warfare.

50. Resolution 2286 (2016) had little impact on the battlefield, where attacks on medical workers and facilities continued with impunity. On 8 June, government jets dropped two barrel bombs near the Al-Bayan trauma hospital and the adjacent Al-Hakim paediatric hospital in Aleppo city. Two points, both within 20 metres of the hospitals, were hit, killing civilians in the area and destroying several buildings. The barrel bombs started a large fire and many of those killed, including a 12-year-old boy, were burned to death. Several walls of the Al-Bayan hospital collapsed and the medical store was set ablaze. Attempts to extinguish the fire damaged the remaining medicines.

51. On 20 July, government forces bombarded a forensic hospital in Aleppo city, injuring five medical workers and damaging the building. The following day, the hospital was destroyed by two barrel bombs.

52. With the opposition-controlled areas of Aleppo city and Aleppo governorate under heavy bombardment by government forces, the loss of every doctor and every clinic leaves civilians without the services that they need in order to survive. As life is made increasingly impossible, those who are able flee. Left behind are those physically unable to flee, including the elderly, the injured and the disabled. The most impoverished members of the community also stay, unwilling to leave what property they own and without sufficient funds to travel and live with dignity elsewhere. Men and boys over the age of 13 years also stay, afraid they will be killed, beaten or disappeared at government checkpoints.

53. As the Government attacks the only supply route into the areas of Aleppo city under the control of armed groups, the attack on medical facilities appears to form part of the already documented siege campaign, which is designed to force the fall of the city, and to pave the way for the advance of ground forces in northern Aleppo governorate.

54. Recent attacks on medical workers and facilities were also documented in Idlib, Damascus and Latakia governorates. On 15 February, the same day as the attack on the maternity hospital in Azaz, government planes twice bombed an medical centre run by Médecins sans frontières in Maarat al-Numan, killing approximately nine people and injuring many more. The second attack occurred 15 minutes later, and appeared to target first responders. The hospital was entirely destroyed, with approximately 25 killed, including 9 members of the medical team and 16 patients. Dozens were trapped in the rubble for up to 48 hours before being rescued.

55. On 30 May, shortly after the adoption of resolution 2286 (2016), pro-Government planes heavily bombarded Idlib city. One strike hit the area directly outside of the Idlib National Hospital. There were no casualties of the attack affecting the hospital, although casualties were documented in other areas of the city.

56. On 20 July, government forces intensely bombarded Idlib city. Al-Watani hospital was hit, killing four civilians. Seventeen people were reported injured. The hospital was put out of service. Later on the same day, the health directorate was heavily damaged in a government air strike. Later, the health services in Idlib released a public message, indicating that the health-care infrastructure had been badly damaged and that it would be difficult to resume operations.

57. On 31 March, government forces aerially bombarded the only hospital in the Damascus suburb of Deir al-Asafir. Over 30 people are believed to have been killed, almost half of whom were children. Dozens were injured. On the same day, shelling from pro-Government forces hit the hospital of the Al-Yamedia camp for internally displaced persons in Latakia. While no casualties were recorded, the attack put the hospital out of operation.

58. In none of the reported attacks were military targets present near the hospitals. The hospitals and clinics attacked were all reportedly serving their humanitarian function.

59. Medical personnel have also been killed by sniper fire. On 25 March, a sniper killed Dr. Mohammed Khous as he was leaving Zabadani field hospital in Rif Damascus. Snipers also fired at those trying to rescue him. Dr. Khous was reportedly Zabadani's last doctor. Civilians have reportedly died from injuries sustained by sniper fire in Zabadani because of a lack of doctors and medicine at the hospital.

60. Members of the Syrian Civil Defence, who provide medical aid at the point of injury and who transport the wounded to nearby medical centres, have been killed in air strikes by pro-Government forces. On 26 April, an aerial attack, reportedly by pro-Government forces, struck a Civil Defence centre in Atarib, Aleppo. Five Civil Defence volunteers were killed and three were injured. On 15 June, an aerial strike hit a Civil Defence centre in Kafr Takharim, Idlib, killing a boy. The centre was destroyed, as were all the Civil Defence vehicles used for rescue and transport of the wounded.

61. As noted above, government forces blocked medical supplies and equipment from entering besieged areas, including Daraya, Douma, Madaya and Zabadani, in Rif Damascus, and the Al-Waer neighbourhood of Homs.

62. Anti-Government armed groups have also attacked health-care facilities, albeit on a far smaller scale. In February and March, armed groups heavily shelled the Sheikh Maqsoud neighbourhood of Aleppo city, held by YPG. On 6 March, rockets fell in the vicinity of the hospital. While the hospital itself was not struck, the rocket fire caused the collapse of several neighbouring buildings, killing over a dozen civilians, including four children.

63. On 3 May, an armed group in the Bani Zeid neighbourhood of Aleppo city launched a rocket attack, striking areas around Doubait maternity hospital in Al-Muhafada neighbourhood. The facade of the hospital was destroyed, as were surrounding businesses. Approximately 15 people were killed, including 3 who were inside the hospital. Twenty people, including hospital staff, were injured. The hospital closed shortly afterwards.

64. ISIL has also attacked hospitals, as part of a wave of suicide bombings on civilian targets, terrorizing the civilian population. On 23 March, five ISIL suicide bombers exploded themselves in different locations in Jableh, Latakia. While the sequence of the bombing is disputed, it appears that, as casualties from the first two explosions were rushed to nearby hospitals, the third bomber exploded himself in front of the Al-As'ad hospital and the fourth, inside the emergency ward of Jableh National Hospital. The bombing inside the National Hospital caused mass casualties, killing 15 members of the medical team and many patients, including those who had been injured in the earlier bombing and who had been transported to the hospital for treatment. Over 50 people were injured. The emergency department was completely destroyed, although the hospital was able to reopen a few days later.

65. In deliberately attacking hospitals, medical units and health-care workers, those responsible have violated international humanitarian law with respect to the duty to care for the sick and wounded, and have committed the war crime of attacking protected objects.

The continued assaults on medical care deprive civilians and injured fighters of medical treatment, increasing the loss of life and the number of persons maimed.

IV. Continuing violence behind the line

66. Much attention has been paid to the wax and wane of the cessation of hostilities agreement, and its impact on the country's disparate battlefields. The decrease in violence during the months when the warring parties more closely adhered to the agreement vastly improved the conditions of civilian life. Such gains must not, however, obscure the fact that many of the often less visible violations appear to have continued unabated throughout the reporting period.

A. Unlawful killings

67. Unlawful killings, including deaths in detention and summary executions, remain a hallmark of a blood-soaked war.

68. Reports of detainees perishing in government custody continued to be received from those fleeing the conflict. Consequently, there is sometimes a delay between families learning of the death and their accounts being documented. In March 2012, Military Security agents arbitrarily detained a man at his workshop in Dara'a. Having learned his whereabouts from a released prisoner, the man's wife visited him twice in Sednaya prison in Damascus in early 2014. She described him as "emaciated" and barely able to stand on his own. In June 2016, she was informed that her husband had died of a heart attack in August 2014 and that she could go to Tishreen military hospital to obtain his death certificate. Sednaya prison is run by the military police corps of the army. Other similar accounts were received during the period under review.

69. While information indicates that government agencies retain information on the whereabouts of thousands of detainees and register their deaths, the practice of informing families in the event of death is random and irregular. In none of the cases documented did the Government surrender the body of the victim to the next of kin.

70. The massive and systematized nature of deaths in State-controlled detention facilities amounts to crimes against humanity and war crimes, as detailed in the report entitled "Out of sight, out of mind: deaths in detention in the Syrian Arab Republic".[3] Together with the failure to conduct transparent investigations, the Government has violated the right to life of those who have died in its custody.

71. Jabhat al-Nusra continues to govern communities through makeshift, unauthorized courts whose procedures bear no resemblance to a fair trial. In March, a court in Sarmada, Idlib, convicted three suspects of kidnapping for ransom, after which they were summarily executed. Such killings amount to the war crime of execution without due process.

72. On 20 July, Jabhat al-Nusra released a video in which its fighters summarily executed 12 government soldiers they had held hostage. The soldiers are shown being asked to state their names for the camera, after which they are all killed by gunshots to the head.

73. ISIL continues to unlawfully kill perceived enemies, including civilians and hors de combat fighters. On 26 February, ISIL militants camouflaged in YPG uniforms stormed Hammam al-Turkman village, Ar-Raqqah. During a three-day offensive, the terrorist group

[3] Available from www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx.

captured a member of the Syrian Democratic Forces, as well as a father and son accused of being YPG informants. All three were executed. Prior to retreating, ISIL fighters reportedly captured and burned alive no fewer than four YPG soldiers who had been manning a checkpoint. In late March, the terrorist group also reportedly kidnapped, brutally tortured and executed seven armed group fighters in the town of Tafas, Dara'a.

74. In late May, after government forces retook Palmyra, Homs, from ISIL, a mass grave containing more than 60 bodies was discovered. The corpses are believed to be government soldiers and members of the allied National Defence Forces who were either executed at close range or beheaded.

B. The disappeared and the missing

75. Civilians, mainly men of fighting age, continue to vanish from the streets of the Syrian Arab Republic. Tens of thousands of Syrians are missing, many in circumstances that suggest they have been forcibly disappeared.

76. Enforced disappearance infringes the victim's fundamental human rights, including the rights to liberty, to personal security and to a fair trial. A crime under international law, enforced disappearance is a violation that persists for as long as the victim's whereabouts remain unknown. It often serves as a gateway to other violations, including torture and murder.

77. In a pattern that began in March 2011 and which continues to this day, Syrians are arrested or abducted by State agents and thereafter disappear from public view. Relatives continue to report cases of those who disappeared between 2011 and 2015. Common sites of arrest and abduction include checkpoints, hospitals, workplaces and homes.

78. Throughout the Commission's existence, Syrians have recounted the terror they feel when passing through government checkpoints for fear of being taken and never heard from again. Some women indicated the final trigger for their becoming refugees was the fact that their adolescent sons faced increasing risks of being held at checkpoints. This fear is well justified: many Syrians have had family members vanish following arrest or abduction by government forces. One man, recently interviewed, did not know the whereabouts of 10 members of his family, who all disappeared in Rif Damascus in 2013 and 2014.

79. Other victims have disappeared while imprisoned, having been transferred from a known detention centre to an unknown location. A man disappeared after being arrested in Damascus in 2012 and held at an official detention centre for more than two years. Attempts by his family to locate him, including through bribes to government officials, have been unsuccessful.

80. Payment of bribes to officials remains commonplace. Families spend large sums attempting to purchase information that sheds light on the fate of their loved ones. The amounts paid vary, and are seemingly dependent on the families' resources and the importance of the person being sought.

81. Armed groups have adopted practices leading to acts tantamount to enforced disappearance. Amongst the missing individuals are human rights defenders Razan Zaitouneh, Samira al-Khalil, Wael Hamada and Nazem Hammadi, who were abducted in Douma — then under the control of Jaysh al-Islam — in 2013.

82. During the reporting period, Jabhat al-Nusra abducted and detained individuals in Al-Ghouta al-Sharkiyah, Rif Damascus. One man was held in December 2015 and released almost a month later. Jabhat al-Nusra fighters, on receiving inquiries from the man's relatives, denied that he was in their custody.

83. Where ISIL detains individuals in its territory, the victims' fate and whereabouts are often discernible because the group's punishments or demands for ransom are usually public. However, there are individuals who remain missing following their abduction. This includes Father Paolo Dall'Oglio, who was abducted in Raqqah city in January 2014. Despite rumours of his murder, his death has not been confirmed.

84. The impact on families of the disappeared is devastating. Without knowledge of their fate, it is difficult — if not impossible — to mourn the loss. The severe mental distress of family members rises to a level that breaches their right not to be subjected to torture or other cruel, inhuman or degrading treatment.

85. In the Syrian Arab Republic, where men are the primary breadwinners, the enforced disappearance of adult male relatives has an acute impact. Many of the women interviewed have no means of supporting themselves, and have to rely on men in their extended families. With husbands and fathers missing for years, and without confirmation of death, female family members are left in a legal limbo, unable to sell or inherit property, or to remarry.

86. Given the large number of missing and disappeared in the country, and the deep distress of the affected families, the release of political prisoners and arbitrarily detained civilians, the tracking of missing and victims of enforced disappearance, and future monitoring of places of detention should form part of confidence-building measures preparing the way for inclusive political negotiations aimed at bringing the conflict to an end.

C. Hostage-taking

87. As the conflict has dragged on and a war economy has taken hold, instances of hostage-taking have risen. Armed groups, including those designated as terrorist groups, have taken hostages in order to effect prisoner exchanges, or for ransom. Women and children are particularly vulnerable to being taken hostage, as families usually move quickly to collect money to pay the ransom, or exert pressure on opposing forces to arrange a prisoner swap.

88. In March 2015, armed groups, including Ahrar al-Sham, attacked Idlib city, taking dozens hostage. Ahrar al-Sham released the hostages in two batches in January and February 2016, following the release of individuals held by pro-Government armed groups from Foua'a and Kafria.

89. On 23 February 2015, ISIL attacked Assyrian Christian villages along the Khabour river in Hasakah. The terrorist group took approximately 200 civilians hostage. The last group of hostages was released in late February 2016. Many of the children, who were forced to watch violent ISIL propaganda, including videos of executions, remain highly traumatized.

90. Government forces arrested or abducted family members of men believed to be fighting against the Government. Those detained in such circumstances are effectively held hostage and are released only when their male relative hands himself in.

91. Members of the warring factions are using the cover of war to enrich themselves. Fighters from armed groups, as well as government soldiers and pro-Government militia members, have detained individuals until such time as their families pay for their release. In such contexts, it is often difficult to discern whether the motives behind particular arrests or abductions are conflict related, or instances of criminal opportunism.

D. Torture

92. The continuing use of torture in the Syrian Arab Republic dramatically underscores the impunity with which the warring parties conduct themselves. Torture is employed as a means of extracting information, and to punish and inflict terror on the civilian population.

93. The use of torture by government forces, particularly its intelligence and security agencies, has been documented by the Commission since its inception. It is extremely rare to find an individual who has been detained by the Government who has not suffered severe torture.

94. The majority of victims are men between the ages of 18 and 60. However, government officials also torture women and children in their custody. The accounts collected relate to torture in government detention centres occurring between 2011 and the reporting period. Some former prisoners only felt able to speak about what they had endured once they had become refugees and lived in places that granted them greater assurances of their physical safety. Others were so traumatized that it took them months, sometimes years, before they were willing to speak about being tortured.

95. Some victims were targeted for arrest because they were activists or otherwise perceived to be not sufficiently supportive of the Government. In other cases victims of torture were, or were perceived to be, members of armed groups or related to members of such groups. A woman believed to have been involved in food distribution in an area not controlled by the Government was arrested in Hama in mid-2014. She was transferred to an intelligence agency in Homs where she was beaten, hung by her wrists and given electric shocks. When transferred to Military Security Branch 235, she saw guards kick male detainees and beat them with pipes and cables.

96. Many victims display physical scars of the abuse they suffered. One man, held in an intelligence agency in Damascus city in 2015, had nerve damage as a result of being hung from his wrists, with his hands tied behind his back, for prolonged periods of time. Former detainees suffer from the psychological after-effects of torture, including feelings of anger, depression and isolation.

97. Conditions in places of detention, particularly those controlled by intelligence agencies, remain abysmal. Former detainees reported a dearth of food, potable water, space, sleep and hygiene and medical care. Reports of lice infestations and infected wounds continue to be regularly recorded. One detainee, held in Hama prison for over three years, stated he had lost more than half his body weight while detained. One woman, held in Dayr az-Zayr in 2015, described losing so much weight that she stopped menstruating.

98. Poor detention conditions had a particularly negative impact on prisoners with physical disabilities. One man, held in a western Syrian governorate, was paralysed on his right side. He relied on other prisoners to assist him in eating, bathing and using the bathroom.

99. The failure of those in charge of detention centres to provide detainees with medical care had a profound impact on those with chronic illnesses and diseases, such as cancer, diabetes and epilepsy. Lack of access to medical care hastened, and in some cases caused, the death of detainees.

100. Between March 2015 and February 2016, Ahrar al-Sham held hostage approximately 55 men, women and children from Idlib city. Some of the hostages, including one woman, were beaten and given electric shocks. While held in Idlib prison, male hostages were beaten. They received little food and no medical care or access to sunlight.

101. Jabhat al-Nusra is reportedly holding detainees in makeshift prisons in Rif Damascus. One man, held in a basement in January 2016, described being beaten by Jabhat al-Nusra fighters until he lost consciousness. Other cellmates were hung from their wrists. Detainees were given little food and were denied medical treatment.

102. Civilians who fled or were released from ISIL-controlled areas provided accounts of the use of torture in ISIL detention centres in Raqqah and Aleppo. Women held in those centres reported hearing sounds of male detainees being severely beaten by prison guards.

103. ISIL publicly lashes and amputates civilians and fighters for infractions of the terrorist group's regulations. Men and boys are lashed in a public square in Raqqah city for smoking cigarettes and for trading during prayer times. Women suffer lashings for not been adequately covered. Men and women are lashed for being in the company of members of the opposite sex from outside their families. Theft is punishable by amputation.

E. Sexual violence

104. The trauma resulting from sexual violence, and the profound social stigma attached to being a victim, continue to deter female and male survivors from coming forward. Months, and often years, pass before a survivor may be willing to have her or his account documented. The consequent underreporting and delayed reporting of sexual violence has rendered any assessment of its magnitude challenging. The accounts below are representative of cases that have only recently been documented by the Commission as victims and witnesses have come forward during the reporting period.

105. Women have been raped by officials during interrogations in detention centres controlled by government intelligence agencies. One woman, held in a detention centre in Government-controlled Dayr az-Zawr in 2015, was brutally raped by the interrogating officer of the Military Intelligence Directorate. On another occasion, he doused her in water and shocked her with electrodes attached to her breasts. Another woman, detained in Branch 235 in 2014, stated that prison officers raped several of her cellmates.

106. In late 2011, government forces arrested relatives of a man suspected of being a member of an armed group. Those arrested included his 9-year-old daughter; a doctor who examined the girl concluded that she had been raped. The girl suffers from nightmares and has difficulties being separated from her mother. Another interviewee, raped by a government official during her detention, said: "I feel I have lost everything. I lost my job and my property. And I have lost my dignity."

107. One woman held in detention in 2014 described the guards pinching female detainees and threatening them with rape as they were transferred from an intelligence agency in Aleppo to another in Homs. During interrogations, several female detainees reported being threatened with rape, being called whores and being questioned about their sexual history.

108. Male detainees are frequently subjected to sexual violence. Many stated that cellmates had been raped with objects and received electric shocks to their genitals. A man, held in an Air Force Intelligence branch in Hama in 2013, stated that cellmates had been raped with knives and other implements, which caused physical injuries. Another detainee, held in Dayr az-Zawr from mid-2011 to the spring of 2012, was stripped naked and hung by his wrists from the ceiling in a room with a female detainee, who was similarly naked and hung from her wrists. "We stood naked and humiliated in front of each other," he said.

109. ISIL fighters have forcibly married Sunni women living in ISIL-controlled areas. Accounts have been received of ISIL fighters demanding women and girls in marriage, in circumstances where it would have been dangerous for the woman or her family to refuse.

Women and girls whose fighter-husbands have died are pressured by ISIL to marry another fighter quickly because it would be risky to resist the group's entreaties.

110. Thousands of Yazidi women and girls, some as young as 9 years old, are sold in slave markets in the governorates of Raqqah, Aleppo, Homs, Hasakah and Dayr az-Zawr. Passed from fighter to fighter as chattel, they endure brutal rapes and are punished with severe beatings and gang rapes when they try to escape. The rape, sexual enslavement and other forms of sexual violence committed by ISIL fighters against Yazidi women and girls held in the Syrian Arab Republic are detailed in the report entitled: "'They came to destroy': ISIS crimes against the Yazidis".[4]

V. Impact of the conflict on children

111. Syrian children continue to be victims of violations by all warring parties. Continually exposed to unbearable levels of violence, they suffer from ongoing, multiple and frequently untreated trauma. An interviewee described how a 5-year-old became suicidal after seeing maimed bodies while fleeing from Minbij. The lack of suitable health care and adequate food further endangers their lives, while the lack of access to education deprives them of future opportunities.

112. Aerial attacks by pro-Government forces have killed hundreds of children in opposition-held areas. On 11 January, an aerial raid killed at least 11 children between the ages of 6 and 12 in a school in Ain Jara, Aleppo. The next day, an air raid in Sarmada, Idlib, a town under Jabhat al-Nusra's control, killed three children.

113. Aerial bombardments continued to result in child casualties in May, particularly among communities of internally displaced persons. On 5 May, three children died in the makeshift school in the Kamouna camp for internally displaced persons in Idlib. One interviewee described the victims' bodies as scorched beyond recognition. On 29 May, government rockets killed two children, aged 7 and 12, while they were playing in the Al-Sakhour neighbourhood of Aleppo city.

114. ISIL continues to carry out indiscriminate attacks that result in the death of children. A series of attacks in Sayda Zaynab, Damascus, killed dozens of civilians, including a 6-month-old baby. Another attack on the Government-controlled towns of Jableh and Tartous killed at least four children. Children as young as 11 years old were killed or maimed by landmines planted by ISIL as it retreated from villages around Kobane and Hasakah cities. Children working in agricultural fields are particularly exposed to this danger.

115. On 12 May, four girls and one 13-year-old boy were killed when Jabhat al-Nusra, Al-Tawhid brigades and Ahrar al-Sham took over Zara village in Hama. Of the 17 persons still missing, 8 are children. Many other children were injured during the attack, including a 4-year-old girl and a 16-year-old boy with Down syndrome. A 15-year-old described how she was shot in the arm while attempting to flee the village with her 6-year-old sister.

116. On the first day of Eid al-Fitr, 6 July, Jaysh al-Fatah rockets in Al-Zahra, Aleppo, killed 3 children, aged 11 and 12. Another 11 children sustained shrapnel wounds; 1 remains in critical condition.

117. Between April and May, Jabhat al-Nusra and Jund al-Aqsa recruited hundreds of children, many under the age of 15, in Idlib, Hama and Aleppo. The recruitment followed campaigns by jihadist ideologues in internally displaced persons camps, mosques and other public spaces. The boys were promised monthly salaries as an incentive for impoverished

[4] Available from www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx.

families to agree to the recruitment. In Al-Bab, Aleppo, ISIL offers $100 to $150 monthly to young men and boys, some only 14 years old, to join.

118. In Aleppo, the armed groups Nour al-Din al-Zinki and Sultan Murad Brigades also take advantage of the population's poverty to recruit boys as young as 14, to whom they offer a monthly salary. Boys are under additional pressure when they are the oldest male family member and are expected to support the family. In Government-controlled areas, Popular Committees and the National Defence Forces reportedly recruit minors into their ranks and send them to battle without providing them with any military training.

119. Under constant bombardment and unable to pay for the high prices of food, families struggle to feed their children. Children, particularly infants, living in besieged areas are adversely affected by the lack of food.

120. A family from Madaya, still under government siege, recounted how their 10-year-old daughter wrote her will, believing she would die of hunger. Also in Madaya, a mother described how the situation became unbearable after the man who smuggled baby formula was maimed by a landmine. After some of their children's friends starved to death, some parents decided to risk leaving the besieged areas.

121. In Aleppo, children suffer from malnutrition, with babies under the age of two being particularly affected owing to the low supply of milk for babies. A mother described how bread and potatoes were the best options to feed her oldest children. The cutting off of the Castello road, Aleppo's lifeline, further endangers food supplies, with a potentially devastating impact for children. In Al-Waer, there are reports of children dying of malnutrition.

122. Attacks on infrastructure affect children disproportionately. On 27 April, a barrel bomb landed in the vicinity of Al-Quds hospital, killing three children and one of the few paediatricians in Aleppo. A 1-year-old child was rescued from the rubble one day after the attack, which killed his mother and siblings. On 8 May, an air missile landed 50 metres away from Al-Hakim hospital in Aleppo, forcing the evacuation of 10 babies in incubators.

123. Cases of children suffering from tuberculosis, cholera, meningitis and polio have resurfaced, owing to the inability of medical services to carry out full vaccination campaigns. A notable exception took place in March when the Government allowed a shipment of vaccinations to Douma. At least 20 children aged 1 to 3 years old were taken by Jaysh al-Islam members to a clinic where they received vaccinations.

124. On 27 May, government forces hit a school in Aleppo. There were no casualties but the school was damaged. Many schools are no longer running, and those still operational are often unable to give classes due to ongoing shelling. There is a lack of primary school teachers and no universities in rebel-held areas. In camps for internally displaced persons, hundreds of thousands of children are not attending school owing to overpopulation and the dire situation of the camps.

125. In Helwanyia village in Jarablus, Aleppo, all schools are closed. Boys receive religious education and ISIL gives children guns to play with. In Al-Bab, ISIL has allowed some schools to reopen but children are required to wear a *jalabyia* and are reportedly taught how to use weapons.

126. In Daraya, where only two makeshift schools function, volunteer teachers lack relevant credentials. Owing to an intensification of shelling by pro-Government forces since August 2015, children stopped regularly attending school.

127. The ongoing violence, coupled with the collapse of the educational system outside Government-held areas, continues to force children to work for survival. A mother described how she sent her 13-year-old son from ISIL-controlled Zaraaya, Aleppo, to

Lebanon so that he could escape ISIL recruitment and work to support the family. Similarly, many children who fled to Turkey work to help their families. In the Syrian Arab Republic, children take any work — from selling vegetables to smuggling fuel — to support their families.

VI. Conclusions and recommendations

A. Conclusions

128. **The cessation of hostilities agreement, which came into effect on 27 February 2016, offered a glimmer of hope to those seeking a path towards a peaceful resolution of the conflict. Its dual focus on guarantees for humanitarian access and ceasefires in several parts of the country seemingly presaged a potential political track to discuss peace. Led by the United States and the Russian Federation, the International Syria Support Group and its related task forces have provided much-needed momentum to identify sources of intransigence.**

129. **In the weeks following the agreement, there was a de-escalation of armed violence across much of the country, providing millions of civilians with some respite from the brutal war. Since late March, however, there has been a marked upsurge in the fighting, with indiscriminate and disproportionate attacks on civilian-inhabited areas, particularly through pounding aerial bombardments.**

130. **On this front, the efforts of the Special Envoy of the Secretary-General for Syria, Staffan de Mistura, deserve stronger support to generate greater traction towards peace.**

131. **There has been some measure of improvement in humanitarian access, with limited supplies having reached all 18 besieged areas. Where land routes remain blocked, relief supplies have been dropped by air to help besieged populations. Since the beginning of 2016, the United Nations and its partners have delivered multisectoral assistance to over 1 million civilians in besieged and hard-to-reach areas.**

132. **Yet, sieges continue in breach of international humanitarian law, with nearly 600,000 people trapped. Humanitarian access, including to provide life-saving essentials such as surgical kits and medicine, is currently being blocked by some of the belligerents. Supplies are running out for hundreds of thousands. Aleppo is a key flashpoint.**

133. **The cessation of hostilities agreement brought a welcome respite for civilians that lasted all too briefly. Since April, breaches have occurred with greater regularity and intensity. Moreover, the agreement did not cover areas held by ISIL, where stronger action is needed. Fighting Jabhat al-Nusra has been highly complicated, especially where it occupies civilian-inhabited areas.**

134. **Medical workers and facilities have come under sustained and targeted attack. As a consequence, there has been a severe weakening of health-care infrastructure, particularly in areas of the country not under government control, with devastating consequences for civilians.**

135. **The plight of internally displaced persons and refugees is now of gargantuan proportions, with transborder and transcontinental implications. This underlines the need for more robust cooperation on assistance and protection of persons on the move, with due regard to equitable international responsibility-sharing and exemplary leadership.**

136. **Away from the battlefield, civilians and hors de combat fighters continue to be disappeared, taken hostage, tortured and subjected to sexual violence, often in the context of detention. Unlawful killings, including deaths in detention and summary executions, remain a hallmark of this blood-soaked conflict.**

137. **The Commission repeats: without a return to the peace process, the Syrian conflict, and the violations and abuses it has nourished, will continue. The sense of hope engendered earlier this year must be revitalized. This demands a shared commitment from and action by all the key parties to de-escalate the conflict and to negotiate constructively.**

138. **In the meantime and at all times, the call to respect human rights and international humanitarian law, and to seek accountability for their infringement, must continue to resonate.**

B. Recommendations

139. **The Commission reiterates the recommendations made in previous reports. It also makes the recommendations below.**

140. **The Commission recommends that all parties:**

(a) **Restore and revitalize the cessation of hostilities, minimize civilian casualties and end indiscriminate attacks on the civilian population;**

(b) **Allow safe, sustained, unhindered and unconditional access to humanitarian aid and respect access to basic necessities;**

(c) **End all sieges immediately, introduce humanitarian truces as pauses from the fighting to reach trapped civilians and enable life-saving services to be delivered, and respect people's freedom of movement;**

(d) **Release detainees, particularly women and children, and treat all persons who are deprived of liberty humanely;**

(e) **Facilitate the tracing of the disappeared and missing, and ensure monitoring of locations and situations linked therewith;**

(f) **Prohibit and prevent absolutely torture and other cruel, inhuman or degrading treatment, including sexual violence;**

(g) **Ban effectively the recruitment and use of children in hostilities, and guarantee effective protection of child rights, including access to education and protection from child labour;**

(h) **Protect humanitarian workers, including medical personnel, facilitate the rapid and unimpeded passage of relief supplies, and safeguard the sanctity of hospitals and medical transport;**

(i) **Prohibit and prevent the use of illegal weapons and related arms trade and trafficking.**

(j) **Protect the country's cultural heritage and historic sites and prevent indiscriminate attacks against them.**

(k) **Strengthen measures and ensure more effective cooperation against terrorists listed by the Security Council.**

141. The Commission recommends that the Government of the Syrian Arab Republic:

(a) Cease indiscriminate attacks on civilian-inhabited areas;

(b) Allow the Commission access to the country.

142. The Commission recommends that anti-Government armed groups repudiate extreme elements and apply effective pressure for compliance with international law.

143. The Commission recommends that countries with influence over the warring parties, in particular the permanent members of the Security Council, work in concert to engage with the parties to end the violence, in the pursuit of an all-inclusive and sustainable political transition process in the country.

144. The Commission recommends that the international community:

(a) Curb the proliferation and supply of weapons, and address the sources thereof;

(b) Sustain and expand funding and other supports for humanitarian operations;

(c) Protect the human rights of all persons, including migrants, internally displaced persons, asylum seekers and refugees, which are part of customary international law, and comply with obligations under international human rights treaties, the Convention relating to the Status of Refugees and the Protocol thereto and other relevant instruments.

145. The Commission recommends that the Human Rights Council support the recommendations made, including by transmitting the present report to the Secretary-General for the attention of the Security Council in order that appropriate action may be taken, and through a formal reporting process to the General Assembly and to the Security Council.

146. The Commission recommends that the General Assembly support its recommendations and enable the Commission to offer regular briefings.

147. The Commission recommends that the Security Council:

(a) Support its recommendations;

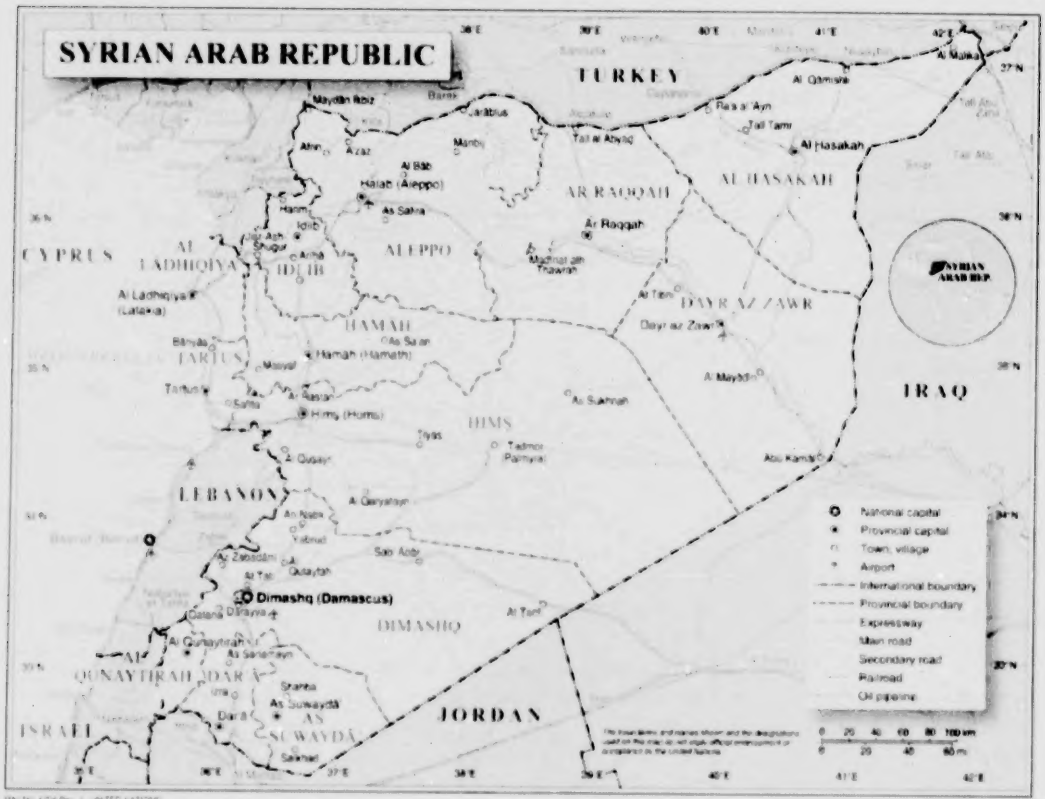
(b) Include regular briefings by the Commission as part of the formal agenda of the Security Council;

(c) Take appropriate action by referring the situation to justice, possibly to the International Criminal Court or an ad hoc tribunal, bearing in mind that, in the context of the Syrian Arab Republic, only the Security Council is competent to refer the situation;

(d) leverage its influence with the relevant actors and stakeholders to ensure a comprehensive and all-inclusive peace process that maintains due respect for human rights and international humanitarian law.

Annex

Map of the Syrian Arab Republic



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Report of the Expert Mechanism on the Rights of Indigenous Peoples on its ninth session, Geneva, 11-15 July 2016

Chair-Rapporteur: Albert Kwokwo Barume

Summary

The Expert Mechanism on the Rights of Indigenous Peoples held its ninth session from 11 to 15 July 2016. In addition to members of the Expert Mechanism, the participants in the session included representatives of States, parliaments, indigenous peoples, United Nations bodies, programmes and specialized agencies, non-governmental organizations, national human rights institutions and academics.

The Expert Mechanism discussed follow-up to the World Conference on Indigenous Peoples, including the review of the Expert Mechanism's mandate, and held a panel discussion on the promotion and protection of the rights of indigenous persons with disabilities. It also discussed the human rights of indigenous peoples in relation to business enterprises.

The Expert Mechanism's study on the right to health and indigenous peoples, with a focus on children and youth was considered. Discussions were also held on follow-up to previous studies, the United Nations Declaration on the Rights of Indigenous Peoples and the Sustainable Development Goals and the rights of indigenous peoples.

The Expert Mechanism adopted the proposals to be submitted to the Human Rights Council at its thirty-third session. In addition, it adopted the study on the right to health and indigenous peoples, with a focus on children and youth, and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

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I. Introduction

1. In its resolution 6/36, the Human Rights Council established the Expert Mechanism on the Rights of Indigenous Peoples as a subsidiary body to assist the Council in the implementation of its mandate by providing it with thematic expertise on the rights of indigenous peoples, as requested by the Council. In the resolution, the Council established that the thematic expertise would focus mainly on studies and research-based advice, and that the Expert Mechanism may suggest proposals to the Council for its consideration and approval.

II. Adoption of studies, reports and proposals

2. The Expert Mechanism adopted its study and advice on the right to health and indigenous peoples, with a focus on children and youth, and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

A. Adoption of the study and advice on the right to health and indigenous peoples

3. The Expert Mechanism:

(a) Refers to paragraph 5 of Human Rights Council resolution 30/4, in which the Council requested the Expert Mechanism to prepare a study on the right to health and indigenous peoples, with a focus on children and youth, and to present it to the Council at its thirty-third session;

(b) Adopts the study and advice on the right to health and indigenous peoples, with a focus on children and youth;

(c) Authorizes the Chair-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the study in the light of discussions carried out at its ninth session and to submit the final version to the Human Rights Council at its thirty-third session.

B. Adoption of the report summarizing the responses to the questionnaire on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples

4. The Expert Mechanism:

(a) Refers to paragraph 6 of Human Rights Council resolution 30/4, in which the Council requested the Expert Mechanism to continue to undertake, with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the questionnaire on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples;

(b) Adopts the updated report;

(c) Authorizes the Chair-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions in the light of discussions carried out at its ninth session and to submit the report to the Human Rights Council at its thirty-third session.

C. Proposals

Proposal 1: Theme of the Expert Mechanism's next study

5. In case the proposal made below to allow the Expert Mechanism to select independently the themes of its future studies has not yet been adopted by the Council at its thirty-third session (see proposal 3 (a) below), the Expert Mechanism proposes to the Human Rights Council that it authorize the Expert Mechanism to undertake a study on one of the following themes:

(a) The rights of indigenous peoples and individuals engaged with the promotion and protection of human rights and fundamental freedoms;

(b) Discrimination facing indigenous peoples in business and access to financial services, with specific reference to indigenous women entrepreneurs;

(c) Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples, including the right of indigenous peoples and individuals not to be subjected to forced assimilation and destruction of culture.

Proposal 2: Theme of the half-day discussion at the thirty-sixth session of the Human Rights Council

6. The Expert Mechanism proposes to the Council that it hold at its thirty-sixth session a half-day discussion on the promotion and protection of the rights of indigenous persons with disabilities, and proposes that the Council make this panel discussion fully accessible to persons with disabilities.

Proposal 3: Review of the mandate of the Expert Mechanism

7. The Expert Mechanism proposes to the Human Rights Council that it incorporate the following suggestions when strengthening the mandate of the Expert Mechanism, in addition to other amendments aiming to strengthen the Mechanism:

(a) The Expert Mechanism should have greater independence and autonomy from the Human Rights Council, including authority to select independently the themes of its future studies, following consultations with indigenous peoples and Member States;

(b) The mandate of the Expert Mechanism should explicitly be based on the United Nations Declaration on the Rights of Indigenous Peoples, which should also be the Expert Mechanism's main normative framework;

(c) There should be enhanced cooperation and interaction between the Expert Mechanism and the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and other special procedure mandate holders involved in the protection and promotion of indigenous peoples' rights. In that regard, the coordination meetings between mandate holders on indigenous peoples' rights and the participation of the Expert Mechanism's Chair-Rapporteur at the annual sessions of the Permanent Forum and the annual meeting of the special procedures should be institutionalized;

(d) The Expert Mechanism should be given the mandate to pursue country engagement upon request, with a view to facilitating constructive dialogue between

indigenous peoples, States, the private sector and other stakeholders. This may include technical assistance, awareness-raising and capacity-building activities;

(e) The number of members of the Expert Mechanism should be increased to seven, with one expert coming from each of the seven indigenous sociocultural regions;

(f) The Expert Mechanism should be mandated to prepare an annual global report on developments regarding the implementation of the Declaration, focusing on emerging good practices;

(g) Cooperation and interaction should be enhanced between the Expert Mechanism and the Human Rights Council, including through meetings with the Bureau of the Council, its President and regional groups;

(h) The Expert Mechanism should contribute to the work of the Working Group on Business and Human Rights, including its global and regional forums, with a view to enabling constructive dialogue between businesses and indigenous peoples;

(i) Cooperation and interaction should be enhanced between the Expert Mechanism and the United Nations human rights system in general, including the treaty bodies and the universal periodic review process;

(j) The Expert Mechanism should enhance its collaboration with national human rights institutions, including through joint activities at national and regional levels;

(k) Adequate resources and secretariat support should be allocated for the expanded mandate of the Expert Mechanism, including for its increased intersessional activities.

8. The Expert Mechanism further proposes to the Human Rights Council that it complete the review of the Expert Mechanism's mandate and introduce the necessary changes at the Council's thirty-third session.

Proposal 4: Participation of indigenous peoples within the United Nations

9. The Expert Mechanism:

(a) Proposes to the Human Rights Council that it make further efforts to enhance the participation of indigenous peoples' representatives and institutions in its work, including in its meetings that are focused on the rights of indigenous peoples (in particular the dialogue with the Expert Mechanism and the Special Rapporteur on the rights of indigenous peoples and the annual half-day discussion on the rights of indigenous peoples);

(b) Proposes to the Human Rights Council that it urge the General Assembly to pursue decisively the ongoing process to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, building on the compilation prepared by the advisers to the President of the General Assembly on the question of enhancing indigenous peoples' participation at the United Nations;

(c) Proposes to the Council that it support the continuation of the work of the advisers to the President of the General Assembly, two of whom are from Member States and two of whom are from indigenous peoples;

(d) Encourages the Council to request the Expert Mechanism to report before the General Assembly at its seventy-first session, in its discussion of implementation of the paragraph 8 of the outcome document of the high-level plenary meeting of the Assembly known as the World Conference on Indigenous Peoples (contained in Assembly resolution 69/2), on the Expert Mechanism's contributions and advice on the issue of indigenous peoples' participation.

Proposal 5: Indigenous persons with disabilities

10. The Expert Mechanism:

(a) Bearing in mind that the Expert Mechanism's sessions offer to indigenous persons with disabilities a unique opportunity to voice their concerns and engage in constructive dialogue with States, proposes that the Council allocate resources in order to make the Expert Mechanism's sessions fully accessible to persons with disabilities;

(b) Proposes to the Council that it encourage States to provide information and data regarding indigenous persons with disabilities in their reports under the universal periodic review process.

Proposal 6: Sustainable Development Goals

11. The Expert Mechanism proposes that the Council urge States to take measures to ensure the participation of indigenous peoples, and in particular indigenous youth, in national processes for the implementation of the Sustainable Development Goals.

Proposal 7: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

12. The Expert Mechanism:

(a) Bearing in mind the forthcoming tenth anniversary of the adoption of the Declaration, proposes that the Council authorize the Expert Mechanism to carry out a review and summary of good practices in the implementation of the Declaration over the last decade, and encourage Member States to contribute to this process;

(b) Proposes to the Council that it call upon States to ensure indigenous human rights defenders are guaranteed a safe working environment and security in compliance with international standards;

(c) Proposes that the Council urge States to contribute to the United Nations Voluntary Fund for Indigenous Peoples;

(d) Reiterates its proposal that the Council and Member States draw increasingly on the United Nations Declaration on the Rights of Indigenous Peoples and the thematic work of the Expert Mechanism in the universal periodic review process, including with regard to collective rights. The Expert Mechanism also proposes that, in future universal periodic review cycles, the Declaration be explicitly included in the list of standards on which the universal periodic review process is based.

Proposal 8: Indigenous peoples' rights, business enterprises, and international financial institutions

13. The Expert Mechanism proposes to the Council that it call upon States with stakes in major international development banks, including the World Bank, to engage in dialogue with these institutions with a view to ensuring that their safeguard standards and their application are in compliance with international human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Proposal 9: Webcasting of the sessions of the Expert Mechanism

14. The Expert Mechanism proposes to the Council that it provide the resources needed for the sessions of the Expert Mechanism to be webcast, thus allowing them to reach a broader audience.

III. Organization of the session

A. Attendance

15. The Expert Mechanism held its ninth session in Geneva, from 11 to 15 July 2016. The members, Albert Kwokwo Barume (Democratic Republic of the Congo), International Chief Wilton Littlechild (Canada), Edtami Mansayagan (Philippines), Alexey Tsykarev (Russian Federation) and Erika M. Yamada (Brazil) took part in the session.

16. The participants of the session also included representatives of States, parliaments, indigenous peoples, United Nations programmes, bodies and specialized agencies, national human rights institutions, non-governmental organizations and academic institutions (see annex I for a complete listing).

17. Also participating in the session were: Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples; Catalina Devandas Aguilar, Special Rapporteur on the rights of persons with disabilities; Alvaro Pop Ac, Chair of the Permanent Forum on Indigenous Issues; Binota Dhamai, member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples; and the advisers to the President of the General Assembly on the question of enhancing indigenous peoples' participation at the United Nations, Kai Sauer (Finland), Sammie Eddico (representing Martha Ama Akyaa Pobee, Ghana), Claire Charters and James Anaya.

B. Documentation

18. The Expert Mechanism had before it the provisional agenda with annotations (A/HRC/EMRIP/2016/1), the draft study on the right to health and indigenous peoples, with a focus on children and youth, and the report on the expert workshop on the review of the Expert Mechanism's mandate (A/HRC/32/26).

19. The Expert Mechanism also had before it the following: a draft summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples; a report entitled "The Finno-Ugric peoples and sustainable development: health of indigenous peoples"; a report of the monitoring mechanism on the implementation of the Declaration in Aotearoa/New Zealand; and a final compilation of views on enabling indigenous peoples' participation in the United Nations (8 July 2016) and the addendum thereto.

C. Opening

20. Mr. Tsykarev, outgoing Chair-Rapporteur of the Expert Mechanism, opened the session and introduced Ramón Alberto Morales Quijano, Vice-President of the Human Rights Council.

21. The Vice-President of the Council recognized the importance of the participation of indigenous peoples in United Nations processes and thanked the United Nations Voluntary Fund for Indigenous Peoples for supporting the participation of 20 indigenous representatives at the session. He noted the important work undertaken by the Expert Mechanism and expressed hope that the review of the Expert Mechanism would strengthen its mandate to promote implementation of the Declaration at both the international and national level. In addressing the right to health and indigenous peoples, he highlighted the

need to look at the broader picture of discrimination and the lack of understanding of the social and cultural situations that indigenous peoples faced when accessing health-care services.

22. In his opening remarks, the Director of the Human Rights Council and Treaty Mechanisms Division of OHCHR thanked the members of the Expert Mechanism for their commitment. He welcomed the 29 Fellows taking part in the Indigenous Fellowship Programme of OHCHR and acknowledged the essential nature of indigenous peoples' participation in ensuing that the work of the Expert Mechanism made relevant and targeted contributions to the advancement of their rights. The Director highlighted the multidimensional nature of indigenous peoples' right to health, particularly for indigenous women, children and persons with disabilities and noted that it is essential when addressing this right to seek participatory solutions with the indigenous peoples concerned.

D. Election of officers

23. Mr. Tsykarev invited the members of the Expert Mechanism to nominate a Chair-Rapporteur and Vice-Chair-Rapporteur for its ninth session. Chief Littlechild nominated Mr. Barume as Chair-Rapporteur and Ms. Yamada as Vice-Chair-Rapporteur. Both were appointed by acclamation.

24. In his opening statement, Mr. Barume thanked the members of the Expert Mechanism for his election and welcomed the newest member, Ms. Yamada. He also acknowledged the work of continuing members: Chief Littlechild, Mr. Mansayagan and Mr. Tsykarev.

25. The Chair-Rapporteur gave an update on the studies and intersessional activities carried out by the Expert Mechanism in the past year. They included the study on the right to health and indigenous peoples, with a focus on children and youth. The study was informed by an expert seminar co-organized by McGill University and OHCHR. The Chair-Rapporteur also discussed the Expert Mechanism's work on the questionnaire sent to States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

26. The Chair-Rapporteur then provided an overview of the agenda for the upcoming ninth session. He closed by thanking the indigenous peoples, organizations and individuals who contributed to the work of the Expert Mechanism and emphasized that the ninth session was an opportunity to pursue the collective vision and purpose that united all participants of the Expert Mechanism: the full realization of the human rights of indigenous peoples.

E. Adoption of the agenda

27. The Expert Mechanism adopted the agenda and the programme of work of the ninth session.

IV. Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism

A. Review of the mandate of the Expert Mechanism

28. The agenda item on follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism began with introductory remarks from Mr. Tsykarev, who recalled paragraph 28 of the outcome document of the World Conference on Indigenous Peoples, in which the General Assembly invited the Human Rights Council:

> Taking into account the views of indigenous peoples, to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples … with a view to modifying and improving the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration.

29. He presented some preliminary views regarding the review of the mandate, which included the following: that the Expert Mechanism should have stronger relationships with the Human Rights Council, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples; that the Expert Mechanism needs to be more readily accessible to indigenous peoples; that the Expert Mechanism has to be better funded and has to be more engaged with country-specific activities, including provision of technical assistance on request; and that the ultimate goal of the review should not be not solely to strengthen the mandate of the Expert Mechanism, but rather to do so with a view to increasing the rights of indigenous peoples on the ground.

30. The Chief of the Indigenous Peoples and Minorities Section of OHCHR provided an overview of the background to the review of the mandate. He also gave an update on the workshop that had been held in Geneva on 4 and 5 April 2016 following Human Rights Council resolution 30/11. The dynamic and constructive discussions at the workshop resulted in a range of specific proposals, which had been, in some cases, also complemented by written submissions. He thanked the more than one hundred participants for their inputs, as well as Mr. Anaya for moderating the workshop in an inclusive and engaging manner. OHCHR looked forward to providing further support to the mandate review process.

31. Mr. Anaya introduced the main discussion points and recommendations made at the workshop. From those, three basic conclusions had become apparent: the need to strengthen coordination between the Expert Mechanism, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples; expanding the Expert Mechanism's mandate to allow it to address country-specific situations, in a way that avoided duplication with the work of the Special Rapporteur; and increasing the number of members of the Expert Mechanism, while maintaining gender and geographical balance.

32. Mr. Barume noted that the workshop had allowed consideration of a number of additional issues deemed important by the Expert Mechanism. They included the need for broader participation of indigenous peoples in the Expert Mechanism, the working relationship between the Expert Mechanism and national human rights institutions, and multi-stakeholder dialogues at the country level, including the private sector. Ms. Tauli-Corpuz added that better coordination between the indigenous mechanisms was needed and

that the Expert Mechanism had a real potential to influence the Human Rights Council and its subsidiary bodies, as well as United Nations specialized agencies based in Geneva.

33. The ensuing discussion demonstrated continued support for the proposals put forward in the report on the expert workshop (A/HRC/32/26). In particular, there was support for greater communication between the Expert Mechanism, the Special Rapporteur, the Permanent Forum and other parts of the United Nations human rights system, and for the Expert Mechanism to be given the authority to select the themes of its studies and prepare an annual report on the implementation of the Declaration.

34. Participants expressed support for the number of experts to be increased from five to seven so as to represent all the indigenous sociocultural regions. Support was also expressed for the proposal that the Expert Mechanism provide technical advice and capacity-building to Member States when requested and for the secretariat to be better staffed and funded.

35. In closing, Chief Littlechild noted the proposal of the Expert Workshop for the Expert Mechanism to prepare an annual global report on the implementation of the Declaration (see A/HRC/32/26, annex I). He also noted the reference made by participants to the adoption by the Organization of American States of the American Declaration on the Rights of Indigenous Peoples, which had highlighted article 24 on "Treaty rights" and acknowledged the importance of that article in advancing the treaty rights of indigenous peoples in concert with article 37 of the United Nations Declaration on the Rights of Indigenous Peoples.

B. Briefing and discussion on the consultation process to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them

36. The briefing and discussion concerned commitments made in paragraph 33 of the outcome document of the World Conference on Indigenous Peoples, to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them. Mr. Sauer, the Permanent Representative of Finland to the United Nations in New York, opened the discussion by outlining the phases of the relevant consultation process established under General Assembly resolution 70/232 in which the Assembly agreed that the consultation process should be timely, inclusive, representative and transparent. The first phase was the appointment of the four advisers: Mr. Sauer and Ms. Pobee, as well as the indigenous advisers, Ms. Charters and Mr. Anaya.

37. Mr. Sauer noted that a questionnaire had been developed and sent to States and indigenous peoples asking for contributions, following which two consultative meetings had been held. Several draft compilations of the contributions had been developed following advice from States and indigenous peoples and the final compilation had now been submitted to the President of the General Assembly. The compilation would form the basis of a draft text for consideration and adoption by the Assembly at its seventy-first session.

38. The indigenous advisors outlined the content of the compilation, stating that there was a clear consensus that indigenous peoples had the right to participate in the United Nations in matters affecting them and that this did not undermine States in any way. There was general agreement on indigenous participation at all levels of the United Nations, but it was unclear whether that could be achieved by enhancing the existing mechanisms. The question of how that could be achieved, and to whom a possible new category of representation could be extended, was further outlined.

39. A number of States supported a new category of representation for indigenous peoples. There were differing views about the possible membership requirements, such as whether it should include only indigenous governments or whether there should be more flexibility in the process. The need to further consult indigenous peoples while keeping up the momentum was identified. Indigenous participants generally supported the need to ensure greater indigenous participation in the United Nations and acknowledged the work of the advisors.

40. In closing, the advisors outlined the current challenges to the process, highlighting the need for a consensus outcome based on engagement, flexibility and a spirit of compromise. Chief Littlechild encouraged that leadership in his closing remark that now was the time to be bold.

V. Panel discussion on the promotion and protection of the rights of indigenous persons with disabilities

41. Mr. Mansayagan opened the panel discussion by welcoming the participants and introducing the panellists. He drew attention to the Expert Mechanism's work on the subject, including most recently in its draft study on indigenous peoples and the right to health. He acknowledged the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the rights of indigenous peoples for co-convening an expert meeting on that theme, with support from the International Labour Office and OHCHR.

42. Olga Montúfar, Director of Fundación Paso a Paso in Mexico, emphasized the importance of ensuring equality of conditions and opportunities for indigenous persons with disabilities. She underlined the importance of both the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples as a legal framework to guide States, indigenous peoples and other stakeholders in implementing the rights of indigenous persons with disabilities. She emphasized that the lack of data on that population was a serious challenge and called for harmonized approaches to capturing data on indigenous persons with disabilities, particularly in Latin America and the Caribbean. She also emphasized that indigenous persons with disabilities must participate in all decision-making on matters that affected them. She identified the following steps forward: the promotion of autonomy of that population group; the need for more research and data; and, most importantly, the development of a global plan to address the situation of indigenous persons with disabilities to ensure they could be fully included in the development of their communities and countries.

43. The Special Rapporteur on the rights of persons with disabilities highlighted the exclusion, marginalization and discrimination faced by indigenous persons with disabilities. She provided an overview of the expert meeting on indigenous persons with disabilities, which had addressed the international human rights framework, including individual and collective rights. She highlighted the need to apply an indigenous lens to the Convention on the Rights of Persons with Disabilities and a disability lens to the United Nations Declaration on the Rights of Indigenous Peoples. She highlighted the need for direct participation of indigenous persons with disabilities, through increased financial support from the United Nations system and appropriate, non-discriminatory services. Evidence, research and data must be participatory and human rights-based. The Expert Mechanism was called upon to take a leadership role in providing conceptual guidance on overcoming challenges, such as ensuring that the national action plans called for by the World Conference on Indigenous Peoples were inclusive of indigenous persons with disabilities and facilitating the development of a network on that issue.

44. Pratima Gurung, from the Nepal Indigenous Disabled Association, discussed the situation of indigenous persons with disabilities from a grassroots perspective. She highlighted several challenges, including: the fact that the diversity of their identities, as indigenous, disabled, women, created specific needs; discrimination and exclusion by States and non-State actors; the need for greater recognition of their collective and individual rights and for environmental problems to be addressed, such as natural disasters. Recommendations to the indigenous-specific mechanisms included: ensuring the participation and representation of indigenous persons with disabilities in their deliberations; taking effective measures to ensure greater awareness of the applicable international legal framework at the national level; follow-up in future sessions of the Expert Mechanism and conducting a study specifically on indigenous women with disabilities.

45. The Special Rapporteur on the rights of indigenous peoples provided an analysis of the nexus, similarities and differences between the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples. She proposed measures to ensure cultural sensitivities were respected. She also called for disability to be embraced as part of human diversity. Finally, she called on indigenous persons with disabilities to effectively utilize the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples.

46. Doreen Demas, an advocate for the rights of indigenous persons with disabilities from Canada, provided three specific recommendations to advance the realization of the spirit of ideal of "leave no one behind" under the Sustainable Development Goals. The first recommendation was that all indigenous-specific mechanisms take all measures possible to ensure accessibility to all indigenous persons with disabilities, including: the provision of alternate document formatting for written materials, such as in Braille, large print, and accessible Microsoft Word or PDF formats, as well as plain language documentation; sign language interpretation for the deaf and FM loop systems for people who were hard of hearing; and ensuring that the physical premises were barrier-free. She further recommended that the Expert Mechanism undertake a specific study in relation to the rights of indigenous persons with disabilities, with the full participation of indigenous persons with disabilities. Lastly, she recommended that, in the appointment of members of the Expert Mechanism, consideration be given to ensuring that indigenous persons with disabilities were represented, in a manner similar to consideration given to regional and gender representation.

47. Indigenous peoples' organizations indicated that there was a significantly higher rate of disability among indigenous peoples and communities caused by multiple factors, including colonization. Indigenous persons with disability experienced multiple and intersecting forms of discrimination, such as stigmatization and marginalization, violence, lack of access to appropriate health care, vulnerability due to migration and the prevalence of the harmful practice of institutionalization. The situation was particularly dire in developing countries and countries impacted by armed conflict and militarization. Nevertheless, indigenous persons with disabilities in developed countries also experienced marginalization and significant levels of risk.

48. The particular vulnerabilities of women and children with disabilities was discussed, with Ms. Devandas Aguilar noting the higher prevalence of gender-based violence and sexual assault and the lack of remedies and protection from such violence. Indigenous peoples' representatives submitted that indigenous children with disability were being removed from their families and communities, in violation of individual and collective

human rights, which jeopardized the well-being and identity of children, families and communities.

49. Furthermore, indigenous persons with disabilities could experience State-based violence, such as violence by police and other State actors. There was often a pathway of negative interaction with the criminal justice system, instead of justice and disability support being provided. Indigenous peoples' lands in some countries were being contaminated, with severe adverse consequences, including birth defects and child disability.

50. States provided examples of good practices, including national disability policies and services addressing indigenous peoples' needs and including the provision of culturally appropriate services. Indigenous representatives called for greater investment in family support and community-based services. Preventive approaches were identified as being of critical importance.

51. Ms. Yamada expressed concerns regarding disabilities caused by mining, particularly the uncontrolled use of mercury. She also emphasized the importance of taking an intercultural approach to disabilities. Mr. Tsykarev called upon States and corporations to safeguard the working conditions of indigenous peoples in order to prevent occupational diseases. He also invited States to revise the system of periodic confirmation of disability status for indigenous persons residing in remote and inaccessible areas in order to be able to obtain a disability pension.

52. The experts thanked the Special Rapporteurs for convening the expert meeting on indigenous persons with disabilities, and agreed that the Expert Mechanism and other United Nations bodies must be fully inclusive of indigenous persons with disabilities. Chief Littlechild recommended that the Committee on the Rights of Persons with Disabilities should consider developing a general comment on indigenous persons with disabilities.

VI. Study and advice on the right to health and indigenous peoples, with a focus on children and youth

53. Mr. Barume introduced the study on the right to health and indigenous peoples, with a focus on children and youth. He expressed his gratitude to the Institute for the Study of International Development at McGill University, which had jointly with OHCHR organized an expert seminar on the topic of the study in Montreal, Canada, in February 2016. He thanked all the experts who had participated in the seminar for their valuable contributions. He thanked all States, indigenous peoples' organizations, non-governmental organizations and national human rights institutions that provided submissions to the study. He then provided a detailed overview of the study, focusing on the advice issued by the Expert Mechanism to States, indigenous peoples and international organizations.

54. Ms. Yamada highlighted the need to strengthen traditional knowledge and practices on health and for intercultural approaches that were sensitive to the health needs of indigenous peoples. She also noted that environmental issues and displacement compound the health challenges of indigenous peoples and called on States to share positive examples of protection of indigenous peoples living in voluntary isolation. Mr. Tsykarev noted that the global strategy and targets for tuberculosis prevention, care and control after 2015, adopted by the World Health Organization (WHO), made no reference to indigenous peoples, despite tuberculosis being a significant challenge for them. He also highlighted the need to lift the taboo around sexual health and sexually transmitted diseases, and called on States and indigenous organizations to conduct joint initiatives in order to prevent

55. Mr. Tsykarev referred to the outcomes of an expert seminar on indigenous peoples and the right to health held on 26 and 27 of May 2016 in the Russian Federation to discuss regional challenges and best practices pertaining to health issues. Participants had, for example, outlined that States must create innovative models that would make it possible to increase access to public health services, including for those who live a nomadic life or live in remote and inaccessible areas. He also highlighted the need to consider the close interconnections between health, livelihoods and ecology. He called upon States to allocate adequate finances to health care, but underlined that many steps could be undertaken within existing resources, including developing paramedicine by involving indigenous health-care practitioners.

56. The ensuing interventions by participants demonstrated widespread support for the main issues raised in the draft study. A particular emphasis was placed on the following issues: the holistic nature of indigenous approaches to health; the need to address maternal and infant mortality; the participation of indigenous peoples in the design of health-care services so that those services incorporated intercultural approaches and were culturally sensitive; disaggregated data on the health of indigenous peoples; the need for Western medicine to recognize the value of indigenous approaches to medicine; and the strengthening and protection of traditional knowledge about health. A central theme among the statements of all participants was that self-determination could only be fully achieved if the right to health was protected.

57. Participants highlighted issues that they believed needed to be further emphasized in the study. They included the need for health professionals and indigenous health workers to be trained in the treatment of psychosocial diseases and mental illness. At present, many indigenous persons who suffered from those conditions due to exposure to violent crimes and conflict-related trauma (including intergenerational trauma) did not have access to treatment. Participants also emphasized the need to recognize the importance of collective well-being and the role of families in the realization of the right to health, particularly for indigenous children and adolescents.

58. Several participants noted that a greater emphasis needed to be placed on language as an important component of the right to health, both in relation to ensuring that health-care services were provided in indigenous languages and the role that language played in the healing process. Comments were also made on the relationship between poor health outcomes and environmental degradation caused by extractive industries and large-scale development, as well as the intersection between food, nutrition and the right to health. Finally, a significant number of participants and States called on the Expert Mechanism to provide support and advice on county-specific health issues, in conjunction with WHO, and noted the need for WHO to appoint a focal point on issues relating to the health of indigenous peoples.

59. Chief Littlechild supported the call made by Ms. Yamada to attend to the rights of indigenous peoples in voluntary isolation. He also highlighted the issue of uranium mining and its negative impact on indigenous peoples' health, and the inclusion of a reference to the "famine and pestilence clause" and the "medicine chest clause" of Treaty No. 6 in Canada.

60. In closing, Mr. Barume reiterated the link between self-determination and the right to health. He highlighted some of the key concerns that had come up during the discussion, including: the strong correlation between historical trauma and the current health conditions faced by indigenous peoples; the important role of indigenous languages in the right to health; the impact of environmental toxins and chemical contamination on not only air and water but entire food systems; the need to develop good practices in the funding models for indigenous health systems; the health challenges faced by indigenous peoples living in conflict and detention; the central role that consultation and free, prior and informed

consent had to play in the right to health; and the need to raise awareness regarding indigenous peoples living in voluntary isolation.

VII. Human rights of indigenous peoples in relation to business enterprises

61. Chief Littlechild chaired a discussion on the human rights of indigenous peoples in relation to business enterprises emphasizing that this was a critical issue for the realization of the human rights of indigenous peoples, including self-determination, rights related to lands, territories and resources and economic, social and cultural rights. The Expert Mechanism had addressed the issue in several of its studies, including in its follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries (A/HRC/21/55). Furthermore, the Expert Mechanism had issued a comment on the Human Rights Council's Guiding Principles on Business and Human Rights at its fifth session in 2012.

62. Participants focused their interventions on four themes. Firstly, participants highlighted the applicable legal and policy frameworks, including the United Nations Declaration on the Rights of Indigenous Peoples, treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, and related general comments, the United Nations Global Compact, the Guiding Principles on Business and Human Rights and the development of a new binding instrument under consideration by Human Rights Council. Participants frequently referenced land rights and permanent sovereignty over natural resources protected under the Declaration. Several speakers also referred to provisions in the Declaration on self-determination and to free, prior and informed consent, which could be characterized as a call for all to work together. The "Calls to Action" of the Truth and Reconciliation Commission of Canada for business to work towards reconciliation was mentioned as an example of how such partnerships could be approached.

63. Secondly, participants highlighted the role of various sectors of business, including investment, tourism and the media, as well as key areas of practice, such as resource revenue-sharing and procurement contracts, in implementing the rights of indigenous peoples in that area. Positive examples of enhancing economic empowerment of indigenous peoples were also highlighted by States and indigenous peoples.

64. Thirdly, participants highlighted ongoing human rights violations in the business sector, particularly violations of spiritual rights and rights related to lands, territories and resources, which caused disease and had an impact on access to potable water. Participants noted that there were examples of corporate violence, including land grabbing and violence against indigenous women and girls. Those interventions highlighted the need for States to ensure that the human rights of indigenous peoples were protected, by ensuring that both States and transnational corporations upheld their responsibilities.

65. Lastly, solutions aimed at self-determination in the area of economic development were outlined, including a strong call for advancement of indigenous-driven economies. National action plans, regulatory schemes for extraterritorial activities and traditional ways of mediation of indigenous peoples were also discussed.

66. Ms. Yamada expressed concern about the role of States vis-à-vis companies that conducted activities affecting indigenous peoples in countries other than the country in which they were headquartered, which often acted without respect for the principle of free, prior and informed consent. She also expressed concern about the violence against indigenous peoples related to land grabbing carried out by agribusiness enterprises, which could often result in evictions of indigenous peoples from their lands.

67. Mr. Tsykarev called upon States to implement national action plans on business and human rights, with specific reference to indigenous peoples' rights. He also referred to the law on ethnological expertise in traditional living and livelihood areas of small indigenous peoples in the Republic of Sakha (Yakutia), Russian Federation. The law, adopted in 2010, not only provided for an extractive industry impact assessment, but also contained recommendations on undertaking long-term programmes for the socioeconomic rehabilitation of indigenous peoples of the North, preservation of their cultural heritage and establishment of a foundation for future generations. Since 2015, not only companies, but also individuals had been able to apply for that ethnological expertise. He called for the establishment of such laws at the federal level as well.

68. Mr. Tsykarev also referred to the high-level dialogue on the proposed Environmental and Social Standard 7 on Indigenous Peoples, held by the World Bank in Addis Ababa in February 2016 with several African Governments. He expressed his concern about the unstable position of some governments, which reaffirmed their commitments toward international norms and standards on indigenous issues, but remained reluctant to endorse the principle of free, prior and informed consent, and concerns about the use of the term "indigenous peoples" in the World Bank's safeguards. He noted that the three United Nations indigenous-specific mechanisms, including the Expert Mechanism, had written a letter to the President of the World Bank arguing that free, prior and informed consent was not the same as broad community support and requesting that the World Bank continue a dialogue with indigenous peoples prior to final endorsement of the new safeguard policy.

69. The Members of the Expert Mechanism suggested that the Working Group on business and human rights should clarify the application of the Guiding Principles on Business and Human Rights to multilateral development banks, with a view to ensuring that they respect human rights in all their operations, and those affecting indigenous peoples in particular.

VIII. Sustainable Development Goals and the rights of indigenous peoples

70. Ms. Yamada, introducing this agenda item, stated that the Sustainable Development Goals, adopted in September 2015, constituted the international community's road map for development in the forthcoming years. She outlined some concerns regarding the degree to which the rights and concerns of indigenous peoples had been addressed in that document and suggested measures that should be taken so that indigenous voices were heard as governments developed and implemented action plans, policies and programmes at the national level to achieve the new goals.

71. She also drew connections between the Declaration and the Sustainable Development Goals, stressing that the Declaration should be the starting point for any consideration of indigenous peoples' individual and collective rights. Of particular relevance to the Goals were indigenous peoples' right to self-determination, the right to freely pursue their economic, social and cultural development and the right to determine and develop priorities and strategies for exercising the right to development. She then highlighted how the studies of the Expert Mechanism could be drawn upon in efforts to implement the Sustainable Development Goals in a manner that was respectful of the rights of indigenous peoples, including in the areas of health (Goal 3), education (Goal 4) and access to justice (Goal 14).

72. Mr. Pop Ac, Chair of the Permanent Forum on Indigenous Issues, discussed his recent participation at the high-level political forum on sustainable development, which

centred on the theme "ensuring that no one is left behind". The Permanent Forum on Indigenous Issues was concerned that some of the Sustainable Development Goals could have a negative impact on indigenous peoples if their free, prior and informed consent was not respected, particularly with regard to clean energy projects. He emphasized the importance of disaggregated data as a means to properly monitor that no one, or no particular group, was left behind as States strove to achieve the goals. He encouraged States to ensure full participation of indigenous peoples in national plans to achieve the goals, in partnership with the United Nations system, and reminded participants that indigenous peoples had much to contribute to the Sustainable Development Goals through their traditional knowledge and food production systems.

73. In the ensuing discussion, representatives of States and indigenous peoples reported on both promising practices and challenges regarding the Sustainable Development Goals. Promising practices included: taking into consideration the specificity of indigenous peoples' relationship with their lands in national development strategies; data collection initiatives that involved the participation of indigenous peoples themselves; and technical assistance for agriculture. Challenges included: insufficient attention being given to the causes and consequences of climate change; a lack of attention to indigenous peoples' world views in relation to the concept of poverty; and the implications of large-scale development projects, often financed by multilateral banks, to indigenous peoples' self-determined development and other rights.

IX. United Nations Declaration on the Rights of Indigenous Peoples

74. Chief Littlechild provided introductory comments to the discussion of the Declaration, including good practices and strategies for the implementation of the Declaration in the promotion and protection of the rights of indigenous peoples. He emphasized the importance of this agenda item, as the tenth anniversary of the Declaration's adoption approached.

75. At its thirtieth session, the Human Rights Council had requested the Expert Mechanism to continue to undertake, with the assistance of OHCHR, the questionnaire survey to seek the views of States and indigenous peoples on best practices regarding possible appropriate implementation measures to attain the goals of the Declaration. Chief Littlechild introduced the draft report, highlighting that the responses from States tended to focus on positive steps taken in particular sectors, such as education, health and environmental policy, rather than reporting on areas that required improvement or on specific measures taken to evaluate progress in the overall implementation of the Declaration. Responses from indigenous peoples provided examples of advocacy, awareness-raising activities, training and capacity-building and translation of the Declaration into indigenous languages.

76. Chief Littlechild noted that, while progress was being made, more attention needed to be focused on action plans specifically aimed at implementation of the Declaration, where evaluation mechanisms could be put in place to measure advancements made over time. Concern was expressed about States' reluctance to reference the Declaration in treaty settlement documents. He stressed the importance of tracking what progress had been achieved over the past decade, and what work remained, as the decade celebration of the adoption of the Declaration approached.

77. Ms. Tauli-Corpuz, the Special Rapporteur on the rights of indigenous peoples, provided a detailed report of her work over the past year, including country visits, thematic studies and good practices and participation in meetings of multinational global and

regional bodies. She had carried out official country visits to Honduras (November 2015) and Brazil (March 2016), as well as a visit to follow up to the situation of the Sami peoples in the Sápmi region of Finland, Norway and Sweden. As to thematic studies and good practices, she had devoted her second report to the situation of indigenous women and girls, who experienced a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses.

78. Mr. Pop Ac provided an update on the work of the Permanent Forum on Indigenous Issues, including its fifteenth session, which took place in May 2016. Several initiatives to implement the outcome document of the World Conference on Indigenous Peoples had been discussed during the session, including the development of national action plans, the establishment of interministerial working groups on indigenous peoples and other measures taken in partnership with indigenous peoples. The fifteenth session was also the setting for the presentation of the system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (see E/C.19/2016/5). With regard to the review of the mandate of the Expert Mechanism, he underlined that complementarity with the Permanent Forum must be one of the guiding elements of the mandate review and supported the idea of expanding membership to seven experts, one from each of the indigenous sociocultural regions.

79. Bimota Dhamai provided a statement on the United Nations Voluntary Fund for Indigenous Peoples, noting that 2015 marked the thirtieth anniversary of the Fund, providing an opportunity to celebrate its accomplishments. In 2016, the Fund had selected 64 indigenous representatives to participate in many forums, including the ninth session of the Expert Mechanism, the fifteenth session of the Permanent Forum on Indigenous Issues, multiple sessions of the Human Rights Council and the Working Group on the Universal Periodic Review and sessions of several treaty bodies.

80. Some States informed the Expert Mechanism of current implementation activities, illustrating engagement with indigenous leaders, including tribal leaders and youth. Some States reported on examples of follow-up to the Declaration, such as legislative measures. Participants made proposals for the advancement of the Declaration in several areas, including: cross-border cooperation; research; legal and policy compliance with free, prior and informed consent; consistent application of international law; and the establishment of national action plans. Chief Littlechild noted the importance of States adopting effective legislative frameworks to implement the Declaration and of engaging in partnerships, rather than unilateral actions.

81. There was reference to the recently adopted American Declaration on the Rights of Indigenous Peoples. Chief Littlechild noted that, in countries belonging to the Organization of American States, the American Declaration and the United Nations Declaration must be read together in such a way that the instrument with the higher standard must be applied in any given situation.

82. Ms. Yamada stated that, in many countries, indigenous peoples were seen as a problem or an obstacle to development, which led to the perpetuation of violence against them. That was often the root cause of the gravest violations of their rights and an impediment to the Declaration not being reflected in national laws and policies. For that reason, efforts to bring reconciliation between indigenous peoples and States must be encouraged and pursued.

83. Members of the Expert Mechanism underlined the critical role that international financial institutions, such the World Bank, could play in the implementation of the Declaration and called upon international development banks and their States shareholders to ensure funded projects and safeguard standards were in compliance with international norms on indigenous peoples.

84. Several members of the Expert Mechanism emphasized the importance of ensuring that indigenous human rights defenders received adequate protection and that their freedom of expression, freedom of assembly and other rights were fully respected. In that regard, they expressed concerns about the situation of Jannie Lasimbang, a former Chair of the Expert Mechanism, who was currently being prosecuted for her role in organizing peaceful assemblies.

X. Follow-up to thematic studies and advice

85. Mr. Tsykarev introduced the agenda item on follow-up to thematic studies and advice by recalling the Expert Mechanism's mandate and listing the studies and advice previously issued by the Expert Mechanism. The studies and advice were meant to provide a better understanding of the provisions of the Declaration and to propose concrete actions that States, indigenous peoples, civil society, international organizations, national human rights institutions and others could take in order to further its implementation. The studies of the Expert Mechanism placed special emphasis on the participation of indigenous peoples themselves in decisions that affected them.

86. He also shared some examples of how the Expert Mechanism was moving forward on issues relating to previous studies. In the study on cultural heritage, the Expert Mechanism had underscored the need for Member States, museums and other collecting entities and international organizations to work together to enable repatriation of cultural items and ceremonial objects of indigenous peoples. The Permanent Forum at its fifteenth session had made two specific recommendations regarding repatriation. One recommendation was directed to United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Expert Mechanism, suggesting they co-host an expert seminar regarding the establishment of a mechanism or an instrument for repatriation of such objects.

87. He also called on States to ensure continued implementation of best practices that had been referenced in previous studies of the Expert Mechanism. As an example, he mentioned the Assembly of Indigenous Peoples of the North in the parliament of Khanty-Mansiysky autonomous region of the Russian Federation, referred to in the study on indigenous peoples and the right to participate in decision-making (A/HRC/18/42), noting that there had been developments that could weaken that good practice significantly.

88. The ensuing discussion focused mostly on the Expert Mechanism's studies on access to justice and cultural heritage. With regard to access to justice, participants highlighted that representation of indigenous peoples in prison systems remained high in several countries and conditions of imprisonment often violated human rights. Participants called for improved juridical systems and legal assistance as a prerequisite to ensuring access to justice. They also emphasized the need to decriminalize the work of indigenous human rights defenders. In terms of cultural heritage, several participants expressed concerns regarding the vitality of their languages and the importance of indigenous languages being taught in schools. Chief Littlechild expressed concerns over violations of spiritual rights when sacred ceremonies as part of cultural heritage were impacted. He also indicated that the Maskwacis Cree had recently declared Cree as the official language in their territories.

89. Participants discussed issues relating to participation, such as low representation in national and local governments, as well as education, including continued discrimination against indigenous peoples in public education systems. Although few good practices were discussed, indigenous representatives noted that the Expert Mechanism's recommendations were very useful, because they broadened understanding of the articles of the Declaration.

90. Summarizing the discussion Mr. Isykarev highlighted the great number of statements on the issue of human rights defenders, catalysed by the murder of Berta Cáceres. He noted that deeper research had to be undertaken on that theme.

XI. Proposals to be submitted to the Human Rights Council

91. The Chair-Rapporteur invited observers to share their recommendations regarding the Expert Mechanism's proposals to the Council. The following is a non-exhaustive list of suggestions made for future studies to be undertaken by the Expert Mechanism:

(a) The situation of indigenous human rights defenders;

(b) Discrimination facing indigenous peoples in business and access to financial services;

(c) Forced assimilation and destruction of culture;

(d) Indigenous peoples and the right to food;

(e) The implementation of the right to self-determination in accordance with article 3 of the Declaration;

(f) The implementation of collective rights;

(g) The promotion and protection of the rights of lesbian, gay, bisexual, transgender and intersex indigenous persons.

92. Ms. Yamada highlighted the important role that States and national human rights institutions could play in disseminating the Expert Mechanism's studies and applying its advice. She also expressed support for the theme of indigenous human rights defenders.

XII. Coordination meeting of United Nations mechanisms on indigenous peoples

93. The Members of the Expert Mechanism held a private meeting with the Chair of the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and a representative of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples. The agenda for that meeting included plans for the upcoming tenth anniversary of the adoption of the Declaration; joint communications; the review of the Expert Mechanism's mandate; and an update on ongoing discussion with UNESCO regarding the repatriation of cultural objects. The mechanisms agreed to collaborate on a number of issues, including in connection with the tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples.

XIII. Adoption of the reports, studies and proposals

94. At the last meeting of its ninth session, the Expert Mechanism adopted its study and advice on the right to health and indigenous peoples, with a focus on children and youth, and the report summarizing the responses to the questionnaire seeking the views of States and of indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples, as well as the proposals listed in section II of the present report. All proposals were adopted by consensus. The members of the Expert Mechanism adopted a provisional agenda for the tenth session of the Expert Mechanism (see annex II).

95. At the final meeting of the ninth session, the members of the Expert Mechanism also acknowledged the significant contribution of Chief Littlechild to the advancement of the rights of indigenous peoples over the course of his six years as a member of the Expert Mechanism.

Annex I

List of participants

States Members of the United Nations represented by observers

Algeria, Argentina, Armenia, Australia, Belgium, Bolivia (Plurinational State of), Brazil, Burundi, Canada, Colombia, Chile, China, Costa Rica, Denmark, Dominican Republic, Ecuador, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Italy, Indonesia, Japan, Lao People's Democratic Republic, Lesotho, Libya, Luxembourg, Mexico, Morocco, Myanmar, Nepal, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Romania, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United States of America, Ukraine, Uruguay, Venezuela (Bolivarian Republic of)

Non-member States represented by an observer

Holy See

United Nations mandates, mechanisms, bodies and specialized agencies, funds and programmes represented by observers

Pan American Health Organization, United Nations Institute for Training and Research, World Intellectual Property Organization

Intergovernmental organizations, regional organizations and mechanisms in the field of human rights represented by observers

European Union

National human rights institutions represented by observers

New Zealand Human Rights Commission

Academic and experts on indigenous issues represented by observers of the following institutions

James Cook University; Leuphana Universität Lüneburg; Structural Analysis of Cultural Systems; Faculty of Law of the Universidad Autónoma de Madrid ; Universidade de Brasilia; University of Manitoba

Non-governmental organizations as well as indigenous nations, peoples, organizations and parliamentarians

Aboriginal Rights Coalition; Acal el Hajeb; Agencia Internacional para la Paz; Aktionsgruppe Indianer & Menschenrechte; Alifuru Council; Arafura Dance Association; Asia Indigenous Peoples Pact; Asociacion de Indigenas Saraguros; Assemblée des Arméniens d'Arménie occidentale; Association "Ellay" de Tombouctou du peuple autochtone Touareg; Association Culturelle Adrar Ath Koudhia Kabylie; Association culturelle et scientifique de Khenchela; Association de femmes de Kabylie; Association Espoir pour les Jeunes Batwa; Association Tartit du Burkina Faso; Australian Indigenous Leadership Centre; Bharat Munda Samaj; Bureau d'études scientifiques et techniques; Comunidad Atacameña de Chunchuri; World Amazigh Congress; Congrès populaire coutumier Kanak; Congreso del Estado de Jalisco; Consejo de Todas las Tierras Mapuche; Consejo Regional Indigena del Tolima; Council of Indigenous Peoples in Today's Vietnam;

Cultural Survival; Derecho, Ambiente y Recursos Naturales; Drumbeat Media; East Arnhem Regional Council; Edlu Foundation; Elders Council of the Shor People; FIAN International; First Peoples Disability Network Australia; Foundation for Aboriginal and Islander Research Action; Friends World Committee on Consultation; Fundación Paso a Paso; Grand Council of the Crees; Harikar NGO; Haudenosaunee External Relations Committee; Human Rights and Development Organization for Poters; IMPECT Association; Indian Law Resource Centre; Indigenous Media Foundation; LAHURNIP; Indigenous Peoples' Centre for Documentation, Research and Information (DOCIP); Indigenous Peoples Development Services; Indigenous World Association; Inuit Circumpolar Council; International Committee for the Indigenous Peoples of the Americas; International Committee for the Indigenous Peoples of the Americas (Incomindios); International Indian Treaty Council; International Public Organization Foundation for Research and Support of Indigenous Peoples of Crimea; Indigenous Peoples and Nations Coalition; Indigenous Persons with Disabilities Global Network; Indian Council of South America; Khmers Kampuchea-Krom Federation; Kinal Antzetite Guerrero AC; Kvenland Association; Lipan Apache Women's Defense group; Maleya Foundation; Maloca Internationale; Maskwacis Cree; Monitoring Mechanism of the Iwi Chairs Forum; Moonfish Aboriginal Corporation; Movimiento Indígena de Nicaragua; Consejo Indígena de Centroamérica; Nación Originaria Yampara; National Congress of American Indians; Native American Rights Fund; Nepal Indigenous Disabled Association; National Indigenous Disabled Women Association; New South Wales Aboriginal Land Council; Northern Land Council; Ochapowace Nation; Ogiek Peoples' Development Program; Otomi People; Oxfam Australia; Pastoralist Information and Development Organization; Pueblo Bubi de la Isla de Bioko; Pueblo Guarani de Hipolito Yrigoyen; Pueblo Indígena Itte Ennaka; Red Nacional de Casas de la Mujer en Mexico; Saami Council; Sami Parliament of Norway; Sengwer Indigenous Peoples Programme; Society for Threatened Peoples; Tartit du Burkina Faso; Ti Hanizke; Toumast Union of Civil Society Organizations of Libyan Amazigh; Universal Esperanto Association; Wayuu Indigenous Women's Force; Wayunkerra Indigenous Women's Initiative.

Annex II

Provisional agenda of the tenth session*

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Panel discussion and interactive dialogue on indigenous human rights defenders.
4. Human rights of indigenous peoples in relation to business enterprises.
5. Thematic study and advice to be prepared in accordance with the forthcoming resolution of the Human Rights Council.
6. Interactive dialogue with national human rights institutions and similar mechanisms.
7. United Nations Declaration on the Rights of Indigenous Peoples.
8. Follow-up to thematic studies and advice.
9. Proposals to be submitted to the Human Rights Council for its consideration and approval.
10. Adoption of the report.

* Subject to changes to the mandate of the Expert Mechanism